

RESOLUTION AND VOTE OF THE BOSTON REDEVELOPMENT AUTHORITY

RE: A CERTAIN TRIPARTITE AGREEMENT CONCERNING  
A PROPOSED DEVELOPMENT SOMETIMES KNOWN AS  
LAFAYETTE PLACE

WHEREAS, the City of Boston (the "City") acting through its Mayor and its Real Property Board and Lafayette Place Associates (the "Developer") propose to enter into a Tripartite Agreement with the Boston Redevelopment Authority (the "Authority") concerning the proposed public and private redevelopment project in Boston called Lafayette Place (the "Project");

WHEREAS, the City and the Authority propose also to enter into a Sale and Construction Agreement with Alstores Realty Corporation, Al-Jordan Realty Corp., and Jordan Marsh Company (Boston) in implementation of the Project;

WHEREAS, the Authority on April 17, 1975 and the Boston City Council on June 23, 1975 have previously adopted certain resolutions with respect to a public and private redevelopment proposal in Boston similar to and within the same general location as the Project;

WHEREAS, the Authority has entered into a contract for loan and capital grant with the Federal Government under Title I of the Housing Act of 1949, as amended, which contract provides for financial assistance in the Project;

WHEREAS, the Urban Renewal Plan for the Bedford-West Urban Renewal Area, Project No. Mass R-82L, has been duly reviewed and approved in full compliance with federal, state and local law;

WHEREAS, the Authority is cognizant of the conditions that are imposed in the undertaking and carrying out of urban renewal projects with federal financial assistance under said Title I, including those prohibiting discrimination because of race, color, sex, religion or national origin;

WHEREAS, Lafayette Place Associates and the City have expressed an interest in and have submitted a satisfactory proposal for the development of the Bedford-West Urban Renewal Area, which is part of the land area to be used in the implementation of the Project;

WHEREAS, the proposed Tripartite Agreement provides for the design and construction within the area bounded generally by Avon Street, Chauncy Street, Exeter Place, Harrison Avenue Extension, Hayward Place and Washington Street:

(a) of public improvements by the City, including parking spaces for about 1,500 automobiles, at least 900 of which spaces will be located within a new, subterranean public parking garage, and

(b) of private improvements by the Developer in air-rights above, within and contiguous to said new parking garage, consisting of an integrated retail, commercial, office and hotel complex;

WHEREAS, the Authority finds that the Project will reverse the economic decline of the downtown retail area of the City, facilitate efficient land use within the area, improve traffic flow, and expand the real property tax base of the area; and

WHEREAS, the Authority finds that the public improvements described in the proposed Tripartite Agreement, including said new public parking garage, and the private improvements described therein will serve a public purpose, and that certain aspects of such private improvements require integration with the public improvements in order to bring the public benefits under Chapter 474 of the Acts of 1946 of the General Laws, as amended, to full fruition;

NOW THEREFORE BE IT RESOLVED AND VOTED BY THE BOSTON REDEVELOPMENT AUTHORITY:

1. That Lafayette Place Associates and the City of Boston acting by and through its Real Property Board are tentatively designated redevelopers of the Bedford-West Urban Renewal Area, each to the extent of its privileges and obligations with respect thereto as set forth in said Tripartite Agreement, subject to:

(a) Concurrence in the proposed disposal transaction by the Department of Housing and Urban Development, if required by law;

(b) Publication of all public disclosure and issuance of all approvals required by the Massachusetts General Laws and Title I of the Housing Act of 1949, as amended.

2. That disposal of so-called Parcel C in the Bedford-West Urban Renewal Project Area by negotiation is the appropriate method of making the land available for redevelopment.

3. That the Secretary is hereby authorized and directed to publish notice of the proposed disposal transaction in accordance with Section 105(E) of the Housing Act of 1949, as amended, including information with respect to the "Redeveloper's Statement for Public Disclosure" (Federal Form H-6004).

4. That the Authority hereby determines that the land and any other property to be acquired for the Project in accordance with said Tripartite Agreement and said Sale and Construction Agreement shall to the extent required to effectuate their objectives be devoted to the purposes of Chapter 474 of the Acts of 1946, as amended.

5. That the above-mentioned Tripartite Agreement is approved in substance and that the Director be, and hereby is, authorized and empowered to execute said Tripartite Agreement, with the understanding that the Agreement will be returned to the Authority, after City Council action before execution by the Director in final form.

MEMORANDUM

August 3, 1978

TO: BOSTON REDEVELOPMENT AUTHORITY

FROM: KANE SIMONIAN, SECRETARY

SUBJECT: BEDFORD-WEST PROJECT  
MASS. R-182 - LAFAYETTE PLACE  
DEVELOPMENT AGREEMENT AND TENTATIVE  
DESIGNATION OF REDEVELOPER

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On April 17, 1975, the Authority authorized the execution of a tripartite agreement by and among the City of Boston, the Authority and Sefrius Corporation, which agreement contemplated the development of a retail/hotel project on land to be assembled next to the existing Jordan Marsh facility. This project is known as the Lafayette Place Project.

Since approval of the project, the Jordan Marsh facility has been remodeled at an approximate capital cost of Thirty-Five Million (\$35,000,000.00) Dollars. The developer has been preparing for the continuation of the private development by expanding the development team with the addition of Mondev International, Inc., a development entity based in Montreal with considerable experience in complicated public/private cooperative development efforts.

The developer has proposed to the Authority and the City that the original development proposal be modified so as to unite, to the greatest extent feasible, the public and private efforts so as to enhance the financial viability and expedite the commencement of construction of the Lafayette Place Project. Extensive review of the nature of the proposed modification has been conducted by the staffs of the Authority, the Mayor and the Real Property Board, and it is the consensus that the modifications proposed are reasonable and necessary and will, in fact, result in an additional substantial infusion of private capital which will permit the continued restoration of the prime retail area of the downtown.

The revised development program provides for the Real Property Board to construct a subterranean municipal garage for 900-1,500 cars in the Lafayette Place site instead of an elevated structure which was to be located behind the site on Chauncy Street. The relocation of this facility enhances the design of the overall project and reduces overall acquisition and relocation costs. Other public improvements to be provided by the City consist generally of the construction

of New Essex Street from the Southeast Expressway to Washington Street, a public plaza and pedestrian way improvements along Washington and Chauncy Streets and around and over the proposed plaza and a kiosk on Summer Street providing improved access to the MBTA.

The anticipated costs of all public improvements is expected to be approximately Twenty-nine Million (\$29,000,000.00) Dollars and the developer's anticipated costs for the initial private phase is approximately Forty Million (\$40,000,000.00) Dollars.

The initial phase of private development consists of the construction over, around and in the garage structure of a five hundred (500) room hotel and three hundred thousand (300,000) square feet of retail space. In addition, a cooperative effort with Allied Stores will result in the construction of a mall through the Jordan Marsh facility on the ground level from Lafayette Place to Summer Street. It is expected that the catalytic effect of the entire program will result in substantial private development on other sites in the area for retail, commercial, office and residential projects.

The proposed program is consistent with the requirements of the Bedford-West Urban Renewal Plan and its implementation requires the continuance of the cooperative efforts which have been made thus far by several and varied public and private entities. The program and outline drawings have been reviewed by and approved by the urban design staff. Further design review will be conducted during the process of G.L., c. 121A, as it is expected that the developer will seek the benefits of this statute.

The development team is now comprised of the City acting by and through the Real Property Board and Lafayette Place Associates, a general partnership consisting of Sefrius Corp., a Delaware corporation and Mondev Associates, Inc., a Massachusetts corporation. The architect for the City is Desmond and Lord, Inc., and the architect for Lafayette Place Associates is Mitchell/Giurgula, Inc. It is proposed that the Authority convey the Bedford-West site to the City, which will acquire by purchase or eminent domain other land necessary to construct the project. The City will, in turn, lease or sell air-rights to the developer. The Authority will retain approval rights with respect to the design of the project and the adequacy of the developers' financial submissions.

It is considered that the public/private development teams have the expertise, experience and financial resources to successfully complete the project.

It is, therefore, recommended that the Authority expedite the realization of this unique and important project by tentatively

designating the Real Property Board and Lafayette Place Associates as Redeveloper of the single parcel in the Bedford-West Urban Renewal Project Area and authorizing the Director to execute the proposed tri-partite agreement.

An appropriate Resolution and Vote is attached.

Attachments.

SALE AND CONSTRUCTION AGREEMENT

Dated , 1978

among

THE CITY OF BOSTON

THE BOSTON REDEVELOPMENT AUTHORITY

ALSTORES REALTY CORPORATION

AL-JORDAN REALTY CORP.

and

JORDAN MARSH COMPANY

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## SALE AND CONSTRUCTION AGREEMENT

AGREEMENT dated as of \_\_\_\_\_, 1978 among THE CITY OF BOSTON, a municipal corporation in the Commonwealth of Massachusetts acting by and through its Mayor and Real Property Board (the "City"), THE BOSTON REDEVELOPMENT AUTHORITY, a public body politic and corporate organized under the laws of the Commonwealth of Massachusetts (the "BRA"), ALSTORES REALTY CORPORATION, a Delaware corporation authorized to transact business in the Commonwealth of Massachusetts ("Alstores"), AL-JORDAN REALTY CORP., a Massachusetts corporation ("Al-Jordan"), and JORDAN MARSH COMPANY (BOSTON), a Massachusetts corporation ("Jordan Marsh"). The City, the BRA, Alstores, Al-Jordan and Jordan Marsh are each hereinafter sometimes called a "Party" and sometimes hereinafter collectively called "Parties".

### THE BACKGROUND OF THIS AGREEMENT

A. Alstores owns certain parcels of land in downtown Boston, Massachusetts, described as the "Annex" and "Bristol" parcels on the site plan attached hereto as Exhibit A. The Annex parcel constitutes all of the land bounded by the nearest sidelines of Avon Street, Chauncy Street, Bedford Street and Washington Street. The Bristol parcel constitutes all of the land bounded by the nearest sidelines of Bedford Street, Chauncy Street, Exeter Place and Harrison Avenue Extension. Al-Jordan owns or is lessee of the parcels of land described in Exhibit A hereto as "Old Main and Shuman" and "Units 1, 2 and 3" and leases or subleases said parcels to Jordan Marsh which operates a department store thereon.

B. In furtherance of its objectives to consolidate the operations of Jordan Marsh in downtown Boston into a

more efficient and productive unit, to upgrade the store in keeping with Jordan Marsh's highly held public image, to ensure that Jordan Marsh will continue to serve its customers within a revitalized and rejuvenated downtown environment, and to inspire the rejuvenation, revitalization and redevelopment of downtown Boston in the public interest, Alstores, in conjunction with its affiliates Al-Jordan and Jordan Marsh, has demolished the structures that existed on the Old Main and Shuman parcels and constructed thereon a new retail facility (which, together with the structures on Units 1, 2 and 3, constitutes the "Jordan Marsh Facility").

C. The City, Lafayette Place Associates (a Massachusetts general partnership hereinafter called the "Developer", which includes as partners Mondev Mass. Inc., a Massachusetts corporation, and Sefrius Corp., a Delaware corporation), and the BRA have entered into an Agreement of even date herewith (the "Tripartite Agreement") providing, among other things, for the City to acquire from the BRA the parcel of land bounded generally by Washington Street, Bedford Street, Harrison Avenue Extension and Norfolk Place and to cause construction of a subterranean parking garage thereon and on the Annex and Bristol parcels (the "Garage"). The Tripartite Agreement also provides for the City to sell to the Developer the air rights above the Garage and appurtenant rights and for the Developer to construct thereon certain commercial facilities including a hotel and a retail center (collectively the "Lafayette Place Complex").

D. Alstores, Al-Jordan, Jordan Marsh and the Developer have entered into an Agreement of even date

herewith (the "Development Agreement") providing, among other things, for the execution and delivery of the Maintenance and Easement Agreement referred to in Section 1.4(b) hereof (the "Maintenance and Easement Agreement") and for certain matters relating to the construction of the Lafayette Place Complex.

E. It is the mutual desire of the Parties to provide for the sale and purchase of the Annex and Bristol parcels, certain appurtenant rights and easements and the rights of Alstores or its affiliates in certain ways, to coordinate the construction and development of the Garage with the Jordan Marsh Facility and to make certain other covenants, agreements and provisions all as hereinafter more specifically set forth.

NOW, THEREFORE, in consideration of the mutual covenants contained herein and intending to be legally bound hereby, the Parties agree as follows:

#### Article One

##### Sale and Purchase

1.1 Sale and Purchase of the Annex and Bristol Parcels. Upon and subject to the terms and conditions contained in this Agreement (including the exhibits hereto), Alstores, Al-Jordan and Jordan Marsh agree to sell and convey, and the City agrees to purchase, the Bristol and Annex parcels together with, subject to Section 2.1, the buildings and other improvements thereon (collectively the "improvements", and including without limitation the bridge spanning Avon Street as part of the improvements) and all rights and easements appurtenant thereto (except that no easement is granted to enter the Jordan Marsh Facility

through an existing tunnel under Avon Street or the bridge spanning Avon Street) including easements for public pedestrian passage in the Passageway and for vehicular access by the City in the Truck Ramp as defined in and subject to and governed in all instances by the terms of the Maintenance and Easement Agreement, and all right, title and interest of Alstores, Al-Jordan or Jordan Marsh in those portions of the following streets and ways included within Lafayette Place as shown on Exhibit A: Exeter Place, Harrison Avenue Extension, Bedford Street and the portion of Chauncy Street contiguous to the Bristol Parcel (collectively the "Bristol ways") and Avon Street (except for existing encroachments on the northerly side of Avon Street, which are substantially as shown on the map of encroachments attached as part of Exhibit D to the form Maintenance and Easement Agreement attached as Exhibit E hereto, to which Alstores or its affiliates shall retain title), Chauncy Street (except for the portion of Chauncy Street contiguous to the Bristol parcel) and Washington Street (collectively the "Annex ways"). The Bristol parcel, ways and appurtenant rights and easements are collectively referred to as the "Bristol Property"; the Annex parcel, improvements and ways and appurtenant rights and easements are collectively referred to as the "Annex Property"; and the Bristol Property and the Annex Property are collectively referred to as the "Properties". The conveyance of the Properties shall be made by (i) quitclaim deeds conveying good and clear record and marketable title to the Bristol parcel and the Annex parcel and, subject to Section 2.1, improvements subject to no encumbrances and rights of others except only those matters set forth as Permitted Exceptions in Exhibit A hereto and (ii) the Maintenance and Easement Agreement granting the rights and easements set forth therein subject to no encumbrances or rights of others except as

provided therein or those matters set forth as Permitted Exceptions in Exhibit A hereto.

1.2. Purchase Price; Payment. The purchase price for the Properties to be conveyed pursuant hereto is \$8,650,000 (of which \$6,150,000 shall be paid absolutely on or before the Closing Date as hereinafter provided and \$2,500,000 shall be a contingent payment to be held in escrow as hereinafter provided) to be allocated between the Properties as Alstores and the City shall agree. The City has heretofore caused the payment to Alstores of \$1,650,000, and immediately upon obtaining the City Council Approval referred to in Section 1.6(d) and the satisfaction of the condition specified in Section 1.7(d), the City shall pay to Alstores an additional \$1,500,000 by a certified or bank check. Such payments shall be held and applied on account of the purchase price or as otherwise provided in Section 1.3 hereof.

At 11:00 a.m. Boston time on the Closing Date (as hereinafter defined), at such place within the City of Boston as the City shall have designated in a written notice received by Alstores prior to such date, the closing of title to the Properties shall take place. At such closing of title the City shall cause the following to occur:

(a) The City shall deliver to Alstores one or more certified or bank checks, payable to the order of Alstores in funds immediately available at the place of closing, in an amount equal to the sum of \$1,000,000 plus, in consideration of an enhancement of the value of the Properties resulting from the demolition referred to in Section 2.1, the costs and expenses of such demolition for which Alstores is entitled thereunder to reimbursement;

(b) The City shall deliver to New England Merchants National Bank as escrow agent (the "Escrow Agent") one or more certified or bank checks drawn on a member of The Boston Clearing House Association payable to the order of the Escrow Agent in the amount of \$2,500,000, to be held by the Escrow Agent in an account (the "Escrow Account") and invested, reinvested and distributed as provided in the escrow agreement referred to in Section 1.3 (the "Escrow Agreement"); and

(c) Ten promissory notes of the Developer or its affiliate shall be delivered to Alstores in the form attached hereto as Exhibit C, maturing respectively on the first through tenth anniversaries of the Closing Date, and each in the principal amount of \$200,000, bearing interest at a rate not less than 8 1/2% nor more than 10 1/2% per annum but otherwise 1 1/2% in excess of the prime commercial lending rate of Manufacturers Hanover Trust Company as in effect from time to time and accompanied by a "clean" irrevocable letter of credit or other security, reasonably satisfactory in form and substance to Alstores. Each such letter of credit shall (i) be in an amount equal to the principal amount of the note which it accompanies plus interest thereon to fourteen days after maturity at the rate of 10 1/2% per annum, (ii) entitle the holder of such note to draw drafts thereunder payable in the Borough of Manhattan, City of New York, in the event any payment of principal of or interest

on such note shall not be paid when due, by presenting such draft together with the related letter of credit and note and a statement signed by the holder that the note was not paid when due and that fourteen days have elapsed since the holder gave the maker of the note written notice of such nonpayment, and (iii) be issued by any one or more of the following: Citibank N.A., The Chase Manhattan Bank N.A., First National Bank of Boston, Manufacturers Hanover Trust Company, Morgan Guaranty Trust Company of New York, Bankers Trust Company, Chemical Bank, Marine Midland Bank, Irving Trust Company, Credit Lyonnais or Banque Francaise du Commerce Exterieur. If other security reasonably satisfactory in form and substance to Alstores shall be delivered in lieu of letters of credit, the term "letters of credit" as hereinafter used shall be deemed to refer to such other security.

On the Closing Date or Construction Commitment Date (as hereinafter defined), whichever is later, the City shall cause the Escrow Agent to deliver to Alstores \$2,500,000 plus interest as provided in the Escrow Agreement. The "Construction Commitment Date" shall mean such business day as Alstores shall specify by notice to the City and the Escrow Agent after any of the following events shall have occurred:

(i) the Developer, or any other person owning the Air Rights (as defined in the Tripartite Agreement) or otherwise having the right to develop the same (such other person being herein referred to as the "Successor Developer"), receives a commitment from one or more Institutional Lenders (as

defined in the Tripartite Agreement) obligating such Lender or Lenders, subject to such conditions as shall be normal for construction loan commitments for projects comparable to the Lafayette Place Complex, to make loans to or for the benefit of the Developer or the Successor Developer in such amount as shall be sufficient, together with any funds available to the Developer or the Successor Developer, to pay the construction costs of the retail and hotel portions of the Lafayette Place Complex or, if other improvements are to be constructed instead of such retail and hotel facilities, the construction costs of such other improvements as the Developer or the Successor Developer shall have the right to develop; or

(ii) the Developer or the Successor Developer shall grant one or more mortgages the loan proceeds from which shall be used in connection with actual construction of any part of the Lafayette Place Complex; or

(iii) the Developer or the Successor Developer commences construction of the retail or hotel portion of the Lafayette Place Complex or such other improvements as the Developer or Successor Developer shall have the right to develop.

If Substantial Completion (as defined in the Tripartite Agreement) of the Garage shall not occur by the 90th day after the date specified in the Master Schedule (as defined in the Tripartite Agreement) for such Substantial Completion, or if by reason of a default by the City or the BRA in the performance of its obligations hereunder or under the Tripartite Agreement, none of the events specified in subparagraphs (i), (ii) or (iii) of this section shall occur on or before such 90th day, then Alstores shall have

the right to specify a business day as the Construction Commitment Date, and the Construction Commitment Date shall for all purposes be the date so specified, notwithstanding the failure of any of such events to occur.

If at any time prior to the Construction Commitment Date an event of default on the part of the Developer shall occur under the Tripartite Agreement and the City or the BRA shall have knowledge of such event of default, it shall promptly notify Alstores of the existence of such event of default and shall not exercise its rights under Section 11.02 or 11.04 or give any notice under Section 11.03 of the Tripartite Agreement without first consulting with Alstores. If the City or the BRA shall have the right through the exercise of remedies provided in the Tripartite Agreement or otherwise to arrange for a Successor Developer, Alstores as well as the City and the BRA shall have the right to find an appropriate Successor Developer, but no Successor Developer shall be designated or accepted as such who is not mutually approved by the City, the BRA and Alstores. The City and the BRA agree to deliver such notices and to exercise such of their remedies under Article XI of the Tripartite Agreement as Alstores shall request, in order to permit a Successor Developer to be designated and to permit the Successor Developer to construct such improvements as it shall have the right to develop. If the City or the BRA shall fail, for a period of 30 days after receipt of such request from Alstores, to

commence exercising such remedies as hereinabove provided or having commenced the exercise of such remedies shall fail to proceed diligently and with continuity to exercise the same, then Alstores shall have the right to exercise the same in the name of and on behalf of the City and the City hereby consents to such exercise.

Prior to, but not after the commencement by the Developer of construction of the retail or hotel portion of the Lafayette Place Complex, if the consent or approval of the BRA to any transfer is required under Article IX of the Tripartite Agreement the BRA shall not give such consent or approval without the consent or approval of Alstores. If the BRA shall receive a notice pursuant to Section 9.04 of the Tripartite Agreement and either the BRA or the Developer shall within five days after the BRA's receipt of such notice deliver a copy thereof to Alstores, and Alstores shall not within 20 days after receipt thereof by Alstores object to such transfer and specify reasonable grounds for such objection (no such objection shall be made if no such reasonable grounds exist), Alstores shall be deemed to have consented to or approved such transfer. The consent of the BRA pursuant to the provisions of Chapter 121A (as defined in the Tripartite Agreement) to any transfer of any interest in the Lafayette Place Complex or of any interest in the Developer shall be deemed a consent by the BRA for the purposes of the first sentence of this paragraph. Notwithstanding the foregoing, no consent by Alstores shall be required under this paragraph to a transfer if after giving effect to such transfer the power and right to carry out the obligations of the Developer under the Development Agreement,

the Maintenance and Easement Agreement and the Tripartite Agreement shall remain in one or more entities under the direct or indirect control of both Mondev International, Ltd. and Union Internationale Immobiliere S.A.

1.3. Closing Date; Termination. The Closing Date shall be November 30, 1978 unless extended. The City shall have the right by notice to Alstores to extend the Closing Date to any business day not earlier than ten days after the giving of such notice provided Alstores receives the amounts that the Developer or the City is obligated to pay as and when provided in Section 1.3 of the Development Agreement and this Section. If the City shall extend the Closing Date beyond January 31, 1979 and any of the Governmental Approvals referred to in Section 1.6(d) shall not have been obtained on or before such date, the City shall pay to Alstores on January 31, 1979 \$250,000 to be held by Alstores and applied on account of the purchase prior or otherwise as hereinafter provided. If \$250,000 is paid by the Developer as provided in Section 1.3 of the Development Agreement, the principal amount of the first to mature of the promissory notes of the Developer referred to in Section 1.2(c) shall not be delivered and the principal amount of the second to mature of such notes shall be reduced to \$150,000, and if \$250,000 is paid by the City pursuant to this Section the cash payments to be made by it to Alstores on the Closing Date pursuant to Section 1.2(a) shall be reduced by \$250,000. In no event, however, shall the Closing Date be later than June 1, 1979, such time being of the essence. The City and the BRA shall use their best efforts to cause the conditions set forth in Section 1.6(d) (the "Section 1.6(d) conditions") to be satisfied as promptly as possible. The Developer has separately agreed with the City and the BRA and with Alstores to use its best efforts to cause City Council Approval and the 121A Approval

referred to in Section 1.6(d) to be satisfied as promptly as possible. Alstores shall use its best efforts to cause the conditions set forth in Section 1.7(d) (the "Section 1.7(d) condition") to be satisfied as soon as possible. If, notwithstanding the foregoing, the Section 1.6(d) and 1.7(d) conditions shall not be satisfied on or before the Closing Date, the Party the condition to whose obligations hereunder shall not have been satisfied may terminate this Agreement by written notice to the others in which event no Party shall have any obligation to the others hereunder or by reason hereof except that (a) if the Section 1.7(d) condition shall have been satisfied, Alstores shall pay to the Developer without interest \$650,000 of the \$1,650,000 heretofore paid to Alstores by the Developer on behalf of the City on account of the purchase price and shall be entitled to retain the balance of all amounts paid on account of the purchase price and (b) if the Section 1.7(d) condition shall not have been satisfied, Alstores shall pay to the Developer the amounts specified in clauses (i) and (iv) of the second paragraph of this Section 1.3. In the event that the City defaults in the performance of any of its obligations, as and when provided under this Article One, to make payments, to deliver the promissory notes of the Developer together with the letters of credit, to execute and deliver the Escrow Agreement, to execute and deliver the Maintenance and Easement Agreement and to cause the conditions referred to in Section 1.7 (other than Section 1.7(d)) to be satisfied, Alstores shall have the right as its sole remedy to terminate this Agreement by written notice to the City and to retain title to the Properties as well as to retain all amounts theretofore paid to it on account of the purchase price. Notwithstanding the foregoing, any election by Alstores to

close title and deliver the deeds as herein provided shall not relieve the City from any obligation of it hereunder to make any payment not made on or before the Closing Date.

If for reasons beyond their control Alstores, Al-Jordan and Jordan Marsh shall be unable (other than by reason of a mortgage lien, mechanic's or tax lien or other monetary charges or claims therefor) to convey title (including the rights under the Maintenance and Easement Agreement) in accordance with this Article One or otherwise to satisfy the conditions specified in Sections 1.6(a), (b), (c), (e), (f), (g) and (h) hereof and if the City shall be in compliance with all its obligations under this Article One, the City may terminate this Agreement by written notice to Alstores (but only after Alstores has been given 30 days' written notice of all material defects in title and has failed to remedy such defects as shall not have been waived) in which event neither Party shall have any further obligations to the other hereunder or by reason hereof, except that Alstores shall pay (i) to the Developer the \$1,650,000 theretofore paid to Alstores by the Developer on behalf of the City on account of the purchase price, (ii) to the City the \$1,500,000 paid to Alstores by the City upon obtaining the City Council Approval and the satisfaction of the Section 1.7(d) condition plus interest thereon at the rate specified in Section 2.6, (iii) if the Closing Date shall have been extended beyond November 30, 1978, to the City or the Developer, whichever shall have paid the same, the amounts paid to Alstores pursuant to the second sentence of this Section 1.3 or Section 1.3 of the Development Agreement, and (iv) to the Developer the cost of examining title and the cost of obtaining a survey of said parcel or

parcels, not to exceed \$15,000 in the aggregate. If on the Closing Date the conditions specified in Section 1.7 shall be satisfied but there shall be material defects in the title to be conveyed hereunder, the City shall have the right, in lieu of terminating this Agreement, to take title by eminent domain and the consideration for such taking shall be the purchase price hereunder. Immediately after the execution and delivery of this Agreement, the City shall cause title to the Properties to be examined and a survey of the Properties to be prepared and to furnish promptly to Alstores written notice of any material defects in title held by Alstores, Al-Jordan and Jordan Marsh to the Properties. If such notice is not given within 45 days of the date of this Agreement (such time being of the essence), the City shall be deemed to waive all defects in title then existing.

Simultaneously with the delivery of the check or checks, promissory notes and letters of credit that are to be delivered on the Closing Date pursuant to Section 1.2 and Section 2.1, (i) Alstores shall deliver the deeds required by this Agreement to be delivered at the closing of title to the Properties, (ii) the Maintenance and Easement Agreement shall be executed and delivered by the parties hereto as provided in Section 1.4(b), and (iii) the City, Alstores and the Escrow Agent shall execute and deliver an Escrow Agreement in substantially the form attached as Exhibit B hereto.

Acceptance by the City of the deeds provided for in this Article One shall be in full discharge of all obligations on Alstores' part to be performed or observed under Article One of this Agreement except as expressly provided herein to the contrary.

1.4. Instruments of Transfer. At the closing of title to the Properties, the following instruments of transfer shall be delivered:

(a) Deeds. Alstores shall deliver to the City two deeds in substantially the form attached hereto as Exhibit D, subject to such changes as the City in light of the results of the title examination and survey shall request within 60 days of the date hereof and Alstores shall approve, duly executed and acknowledged by the grantor. To enable Alstores to make conveyance as herein provided, Alstores may, at the time of delivery of the deeds, use the purchase money (other than the payment to the Escrow Agent) or any portion thereof to clear the title of any or all encumbrances or interests, provided that all instruments so procured are recorded simultaneously with the delivery of said deeds.

(b) Maintenance and Easement Agreement. The City, Alstores, Al-Jordan and Jordan Marsh shall execute and deliver a Maintenance and Easement Agreement with the Developer substantially in the form of Exhibit E hereto with such changes thereto as may be reasonably requested by any of the parties thereto, in a written notice delivered at least 20 days prior to the Closing Date, in order to facilitate obtaining financing or the consent and agreement referred to in Section 1.7(d) or to comply with governmental or construction requirements or to permit the same to be recorded (including the preparation of a survey), provided that such changes do not impose unreasonable burdens on or otherwise unreasonably adversely affect any other party thereto or its affiliates.

1.5. Possession. On the Closing Date, possession of the Bristol parcel and the Annex parcel and improvements shall be delivered by Alstores to the City, subject to Section 2.1, free and clear of all tenants and occupants.

1.6. Conditions to the City's Obligations. The obligation of the City to effect payment of the purchase price payable on the Closing Date as provided in Section 1.2 is subject to the fulfillment, at the time of the closing of title hereunder, of the following conditions:

(a) Instruments of Transfer. Alstores shall have delivered the deeds duly executed by the grantors thereunder and a counterpart of the Maintenance and Easement Agreement duly executed by Al-Jordan and Jordan Marsh.

(b) Marketability of Title. Title to the Properties (including without limitation the rights and easements granted to the City and the Developer pursuant to the Maintenance and Easement Agreement) shall comply with Section 1.1.

(c) Consents and Releases for Avon Street and Bridge and Mortgage Subordination, Etc. The City shall have received in recordable form (i) from the owner and lessee of the premises abutting the northerly side of Avon Street at the point where the bridge crosses Avon Street, and from the holder of each mortgage on such premises, a consent to the demolition of the bridge and a release of all their right, title and interest in and to the bridge and such portion of Avon Street and (ii) from the holder of such mortgage an instrument subordinating such mortgage to the rights of the City and the Developer under the Maintenance and Easement Agreement.

(d) Governmental Approvals. (i) The Boston City Council shall have given, to the extent required by law, its approval of the City's entering into its obligations hereunder and under the Tripartite Agreement (the "City Council Approval"). (ii) The BRA shall have approved the Developer's application for authorization to proceed with the Lafayette Place Complex pursuant to Chapter 121A of the General Laws of Massachusetts and such approval shall not have been appealed (the "121A Approval"). (iii) All environmental approvals required by law for the construction of the Garage and the Lafayette Place Complex ("Environmental Approvals" and, collectively with the City Council Approval and the 121A Approval, the "Governmental Approvals") shall have been obtained and any appeal period with respect thereto shall have expired.

(e) Corporate Authorizations. The City shall have received resolutions, certified by the Secretary or an Assistant Secretary of such corporation, of the Board of Directors of Alstores, Al-Jordan and Jordan Marsh, duly adopted at a meeting or meetings thereof, authorizing the execution and delivery of this Agreement and the consummation of the transactions contemplated thereby.

(f) Opinion of Counsel. The City shall have received the favorable written opinion dated the Closing Date of Sullivan & Cromwell or Hemenway & Barnes or both, as counsel to Alstores, Al-Jordan or Jordan Marsh in connection with this transaction, or other counsel acceptable to the City, as to (i) the corporate

power and authority of Alstores, Al-Jordan and Jordan Marsh to execute, deliver and perform this Agreement, (ii) the due authorization, execution and delivery by Alstores, Al-Jordan and Jordan Marsh of this Agreement, and (iii) the validity and legally binding effect of this Agreement upon Alstores, Al-Jordan and Jordan Marsh.

(g) Representations and Warranties. The representations and warranties in Section 3.1 hereof shall be true as of the Closing Date.

(h) Operating Covenant. The City shall have received an instrument in recordable form, substantially in the form attached hereto as Exhibit F, duly executed by Al-Jordan and Jordan Marsh providing for an operating covenant with respect to the Jordan Marsh Facility.

1.7. Conditions to Alstores' Obligations. The obligation of Alstores to deliver the deeds with respect to the Properties is subject to the fulfillment of the following conditions:

(a) Payments. The payments in respect of the purchase price to be made on or prior to the Closing Date, including the payment to the Escrow Agent, the payment to Alstores in reimbursement of demolition costs and the delivery of promissory notes and letters of credit, shall be made as provided in Section 1.2.

(b) Authorization. Alstores shall have received evidence reasonably satisfactory to it as to authority of each person signing, on behalf of the City, the BRA or the Developer, this Agreement, the Escrow Agreement, the Maintenance and Easement Agreement and the promissory notes and the letters of credit referred to in Section 1.2, to execute and deliver the documents and instruments executed

and delivered by such person and to bind the entity which such person by so signing purports to bind.

(c) Opinions of Counsel. Alstores shall have received the favorable written opinion dated the Closing Date, satisfactory in form and substance to Alstores, of Corporation Counsel of the City in the case of matters relating to the City and the BRA and of Palmer & Dodge in the case of matters relating to the promissory note or notes of the Developer, or in each case other counsel acceptable to Alstores, as to (i) the power and authority of each person signing to execute, deliver and perform this Agreement and the promissory notes referred to in Section 1.2, (ii) the due authorization, execution and delivery of this Agreement, the Escrow Agreement, the Maintenance and Easement Agreement and the Option Agreement by such of the City, the BRA and the Developer as are parties thereto, and the promissory notes to be delivered pursuant to Section 1.2 by the makers thereof, and (iii) the validity and legally binding effect, as to such of the City, the BRA and the Developer as shall be parties thereto, of this Agreement, the Escrow Agreement, the Maintenance and Easement Agreement and such promissory notes.

(d) Mortgagee's Consent, Etc. The holder of the mortgage on the Jordan Marsh Facility shall have consented to the transactions contemplated hereby and agreed to deliver on or before the Closing Date the consent, release and other instrument referred to in Section 1.6(c).

(e) Representations and Warranties. The representations and warranties in Section 3.2 hereof shall be true as of the Closing Date.

The City and the BRA covenant that, subject to the satisfaction of the conditions specified in Section 1.6, they shall cause the conditions specified in this Section 1.7 (other than Section 1.7(d)) to be satisfied on or before the Closing Date.

1.8. Transfer Taxes. Alstores agrees to pay or cause to be paid all real property transfer taxes, if any, which may be due and payable upon or in connection with the transfer of all or any part of the Properties as hereby contemplated.

1.9. Fire and Other Casualties. The obligation of the City to effect payment of the purchase price shall not be affected by fire or other casualty to any buildings or other improvements on the Properties. Nevertheless, if the improvements on the Annex parcel shall be damaged or destroyed by fire or other casualty, Alstores shall apply the net proceeds of any insurance allocable to such improvements and received by it in respect of such fire or other casualty to reimburse Alstores or the City, as the case may be, for the cost of demolition to grade and fencing of the Annex parcel, and the balance, if any, remaining after such reimbursement shall be retained by Alstores.

1.10. Real Estate Taxes, Etc. Real estate taxes and any water and sewer charges with respect to Properties shall be apportioned as between Alstores and the City as of the midnight immediately preceding the date that the conditions in Section 1.6(d)(i) and Section 1.7(d) are satisfied (the "Apportionment Date"). Alstores shall pay to the City an amount equal to any real estate taxes and any water and sewer charges theretofore unpaid and allocable to periods prior to the Apportionment

Date but Alstores shall have no liability for any real estate taxes and any water and sewer charges allocable to periods subsequent thereto. The City shall pay to Alstores an amount equal to any real estate taxes and any water and sewer charges theretofore paid and allocable to periods subsequent to the Apportionment Date. If the amount of said taxes is not known at the time of the delivery of the deeds, they shall be apportioned on the basis of the taxes assessed for the preceding fiscal period, with a reapportionment as soon as the new tax rate and valuation can be ascertained. Alstores shall be entitled to the payment of all net tax refunds, if any, which relate to taxable periods or portions thereof prior to the Apportionment Date.

1.11. Brokerage Fees and Other Expenses. The City represents and warrants that it has not negotiated with any broker, consultant, finder or like agent with respect to the subject matter of this sale who might be entitled to any commission or compensation on account of this transaction, and the City hereby agrees to indemnify and hold harmless Alstores from and against any such commission or compensation. Alstores represents and warrants that it has not negotiated nor has any of its affiliates negotiated with any broker, consultant, finder or like agents with respect to the subject matter of this sale who might be entitled to any commission or compensation on account of this transaction, and Alstores hereby agrees to indemnify and hold harmless the City from and against any such commission or compensation. Each party hereto agrees to bear and pay for its own account the fees and disbursements of its own counsel, accountants, appraisers, engineers and other advisers in

connection with the negotiation and preparation of this Agreement and the closing of title hereby contemplated. The provisions of this Section 1.11 shall survive the closing of title hereby contemplated or the termination of this Agreement.

1.12. Certain Acknowledgements by the City. The City acknowledges that neither Alstores, Al-Jordan nor Jordan Marsh has made any representation or warranty, and the City is not relying on any representation or warranty made by any person acting on their behalf, pertaining to all or any part of the Properties, the physical condition or uses thereof, or their compliance with any building codes or other governmental requirements. The City has examined the Properties and, except as expressly provided in or pursuant to this Agreement, will purchase the same "as-is", or as they may be by reason of the demolition contemplated in Section 2.1, and subject to any violations of building codes or other governmental requirements as may exist on the dates of the closing hereinabove provided. Jordan Marsh shall have the right to remove or abandon, as it shall elect, any trade operating fixtures, partitions, furniture and furnishings, office equipment and business machines, machinery, apparatus, installations, equipment and other property used in connection with the conduct of a department store business from said parcels prior to the transfer of possession to the grantee pursuant hereto.

## Article Two:

### Construction

2.1. Construction of Garage. Alstores shall use its best efforts, and Al-Jordan and Jordan Marsh agree to

cooperate with such efforts, to commence demolition of the improvements (including the bridge across Avon Street) on the Annex Parcel as soon as reasonably possible after the Apportionment Date and to prosecute diligently said demolition to completion by the date specified in the Master Schedule. Such demolition shall include closing the opening in the wall of the Jordan Marsh Facility at the point where said bridge abuts the Jordan Marsh Facility, such closing to be accomplished with materials as nearly as possible the same as the existing wall. In connection with such demolition, Alstores shall take such measures as the City shall reasonably request to comply in substance with the competitive bidding provision of Section 44a - 44e of Chapter 149 of the General Laws of Massachusetts, as amended, whether or not such compliance is legally required. The City shall reimburse Alstores (to the extent not reimbursed through insurance proceeds as provided in Section 1.9) for all costs and expenses reasonably incurred by Alstores in connection with such demolition and closing of the wall opening. All such costs and expenses incurred prior to the Closing Date shall be reimbursed on the Closing Date and all such costs and expenses, if any, incurred after the Closing Date shall be reimbursed promptly after demand therefor. The City agrees that promptly after it acquires title to the Properties and the completion of such demolition, it shall use its best efforts to commence construction of the Garage and diligently prosecute said construction to completion in accordance with the Tripartite Agreement and the Master Schedule and shall otherwise comply with the Tripartite Agreement. The City hereby grants to Alstores a license to enter the Annex Parcel after the Closing Date for

the purposes of completing the demolition hereinabove referred to.

The BRA shall not approve, pursuant to Section 4.03 of the Tripartite Agreement, plans for the exterior design of the Lafayette Place Complex or permit such plans to be treated thereunder as approved, without the approval by Jordan Marsh of such exterior design to insure that it does not detract in appearance from the Jordan Marsh Facility provided such approval by Jordan Marsh is not unreasonably withheld; such approval by Jordan Marsh shall be deemed to be given if Jordan Marsh shall not raise specific objection thereto in writing within 15 days after Jordan Marsh shall receive copies of such plans.

2.2. Architectural Coordination. Alstores shall have the right to be informed of, and to consult with the City and its architects with respect to, the design and development of the Garage in a cooperative effort to coordinate the overall planning, construction, harmonization, integration and design of the Garage with the Jordan Marsh Facility and to achieve the objectives set forth in Section 2.3(c). All recommendations, requests or suggestions made by Alstores to the City shall be timely made.

2.3. Standards and Manner of Construction. The construction (which word, as used in this Article, includes, without limitation, initial construction, excavation necessary for such initial construction and, except where otherwise specified, alterations, restoration, repair, rebuilding, modernization and new construction) which shall or may be performed by the City as provided in this Agreement, shall be subject to and in accordance with the following requirements and standards:

(a) Upon commencement of any construction, the City shall diligently prosecute said construction to completion;

(b) All construction shall be in a good and workmanlike manner using first-class materials and in accordance with all applicable governmental laws, ordinances, rules and regulations;

(c) The City shall perform its construction so as not to unreasonably interfere with or impair the access to, use, occupancy or enjoyment of the Jordan Marsh Facility by Al-Jordan or Jordan Marsh or their employees, customers, visitors and licensees ("Permittees") and during such construction shall provide fire egress from the locations where the Jordan Marsh Facility opens onto Avon Street to Chauncy Street as required by law;

(d) If during construction the City's property and the construction thereon could reasonably be deemed to constitute a hazardous condition for Al-Jordan, Jordan Marsh or their Permittees or detract from the attractiveness, which would otherwise exist, of the Jordan Marsh Facility or in the event that either Party's later construction could reasonably be deemed to constitute a hazardous condition or to detract from the attractiveness of the improvements of the other, the Party performing the construction (or on whose property the construction is performed) will erect and maintain during the term of such construction, an adequate and attractive appearing construction barricade, or other protective device, of adequate height, and otherwise so as to provide ade-

quate protection to, and screening from, the public, and shall maintain the same until removal would be justified under good construction practice;

(e) The City will at all times:

(i) take any and all safety measures reasonably required to protect Al-Jordan, Jordan Marsh and all Permittees from injury or damage caused by or resulting from the performance of its construction,

(ii) indemnify, hold harmless and defend Al-Jordan and Jordan Marsh from and against all claims, demands, suits, costs, expenses, and liabilities arising from or in respect to the death, accidental injury, loss or damage caused to any natural person or to the property of any person or entity as shall occur by virtue of its construction, and

(iii) indemnify and hold Al-Jordan and Jordan Marsh harmless from and against mechanic's, materialmen's and/or laborers' liens, and all costs, expenses and liabilities arising from its construction.

2.4. Insurance During Construction. During the construction of the Garage, the City shall maintain or cause its contractors to maintain, at its own expense or the expense of such contractor owner's liability insurance in such amounts as shall customarily be maintained by owners, contractors, builders or developers during similar construction. All policies of insurance maintained by the City under this Section 2.4 shall name Al-Jordan and Jordan Marsh as co-insureds.

2.5. Utility Lines. The Jordan Marsh Facility is served by lines for water, sanitary and storm sewerage, gas,

steam, electricity and telephone ("utility lines"). The City shall not disturb any such utility lines until it has caused them to be relocated, or other utility lines substituted, on a permanent basis. All utility services to the Jordan Marsh Facility shall be kept in continuous operation. If any such relocation or substitution requires work within the Jordan Marsh Facility to connect lines therein to the substituted or relocated utility lines, Alstores, Al-Jordan or Jordan Marsh shall perform such work subject to reimbursement of cost reasonably incurred by it as described below, provided that the plan for any work for which such reimbursement is sought shall have been submitted to the City for its review and approval (not to be unreasonably withheld) prior to the commencement of such work. The City shall notify Alstores and Jordan Marsh from time to time and as far in advance as possible of the extent to which the City needs to disturb such utility lines. The City shall pay, or cause to be paid by someone other than Alstores, Al-Jordan or Jordan Marsh, all costs incurred in connection with the relocation or substitution of utility lines.

2.6. Interest. Any sums payable by any Party to any other pursuant to the terms and provisions of Article Two of this Agreement that shall not be paid when due shall bear interest at the rate of two percent in excess of the average prime lending rate of the member banks of the Boston Clearing House Association per annum, as in effect from time to time, from the date payment thereof became due.

#### Article Three:

##### Miscellaneous

3.1. Representations and Warranties of Alstores. Alstores, Al-Jordan and Jordan Marsh each represents and

warrants to the City as follows: Such corporation is duly organized, validly existing and in good standing as a corporation under the laws of the jurisdiction of its incorporation and has all necessary corporate power to execute and deliver this Agreement and perform all its obligations hereunder. This Agreement has been duly authorized by all requisite corporate action on the part of such corporation and is a valid and legally binding obligation of such corporation in accordance with its terms. Neither the execution and delivery of this Agreement by such corporation nor the performance of its obligations hereunder will result in the violation of any provision of such corporation's articles of incorporation or by-laws, as amended to date, or of any law or governmental regulation, or will conflict with any order or decree of any court or governmental instrumentality, relating to such corporation.

3.2. Representations and Warranties of the City and the BRA. The City and the BRA each severally represents and warrants to Alstores, Al-Jordan and Jordan Marsh as follows, subject to the satisfaction of the Section 1.6(d) condition: Such Party has all necessary power to execute and deliver this Agreement and perform all its obligations hereunder. This Agreement has been duly authorized and is a valid and legally binding obligation of such Party in accordance with its terms. Neither the execution and delivery of this Agreement by such Party nor the performance of its obligations hereunder will result in the violation of any law, ordinance or regulation, or will conflict with any order or decree of any court or governmental instrumentality relating to it.

3.3. Joint and Several Rights of Alstores, Jordan Marsh and Al-Jordan. Any right or benefit granted hereunder

to Alstores shall be deemed to be granted to and shall be enforceable by Alstores and/or Jordan Marsh and/or Al-Jordan and/or any other affiliate of Alstores jointly and severally and performance of any duty or obligation hereunder (if fully performed hereunder) required of Alstores as performed either by Alstores and/or Jordan Marsh and/or Al-Jordan and/or any other affiliate of Alstores shall constitute full performance hereunder.

3.4. Notices. Every notice, demand, request, consent, approval or other communication which any Party is required or desires to give or make or communicate upon or to another Party (the "Party to be notified") shall be in writing and shall be given or made or communicated by mailing the same by registered or certified mail, postage prepaid, return receipt requested, or delivered by hand, addressed to the Party to be notified at the following addresses:

- (a) If to Alstores, Al-Jordan or Jordan Marsh:

Jordan Marsh Company  
450 Washington Street  
Boston, Massachusetts 02107

Attention: President

and

Alstores Realty Corporation  
1114 Avenue of the Americas  
New York, New York 10036

Attention: President

with a copy to:

Sullivan & Cromwell  
250 Park Avenue  
New York, New York 10017

Attention: Irvine D. Flinn

- (b) If to the City or the BRA:

Commissioner of Real Property  
of the City of Boston  
City Hall  
Boston, Massachusetts 02201

Corporation Counsel of the  
City of Boston  
City Hall  
Boston, Massachusetts 02201

Director  
Boston Redevelopment Authority  
City Hall  
Boston, Massachusetts 02201

With a copy to the Developer:

c/o Mondev Mass., Inc.  
One Westmount Square  
Suite 600  
Montreal, Quebec H32 2R5

Attention: President

and

c/o Sefrius Corp.  
600 Madison Avenue  
New York, New York 10022

Attention: President

and

c/o Palmer & Dodge  
One Beacon Street  
Boston, Massachusetts 02108

Attention: James B. White

or to such other address or addresses as the Party to be notified shall from time to time and at any time designate by notice to the other Parties.

Every notice, demand, request or other communication sent shall be deemed to have been given, made or communicated, as the case may be, at the time that the same shall have been received.

3.5. No Waiver. No waiver of any default by any Party hereto shall be implied from any omission by any other Party hereto to take any action in respect of such default,

whether or not such default continues or is repeated. No express waiver of any default shall affect any default or cover any period of time other than the default and period of time specified in such express waiver. One or more waivers of any default in the performance of any term, provision or covenant or any other term, provision or covenant contained in this Agreement shall not be deemed to be a waiver of any subsequent default in the performance of the same term, provision or covenant or any other term, provision or covenant contained in this Agreement. The consent or approval by any Party hereto or of any act or request by any other Party hereto requiring consent or approval shall not be deemed to waive or render unnecessary the consent or approval to or of any subsequent similar acts or requests. Except as otherwise herein specifically provided, the rights and remedies of each Party hereto under the terms of this Agreement shall be deemed to be cumulative and none of such rights and remedies shall be exclusive of any others, or of any right or remedy at law or in equity which any Party hereto might otherwise have from a default under this Agreement and the exercise of any right or remedy by a Party hereto shall not impair any such Party's standing to exercise any other right or remedy.

3.6. No Relationship of Principal and Agent.

Neither anything contained in this Agreement nor any acts of the Parties hereto shall be deemed or construed by any Party hereto or by any third person to create the relationship of principal and agent, or of limited or general partnership, or of joint venture, or of any association between the Parties hereto.

3.7. No Personal Liability. No officer, director or stockholder, as such, of Alstores, Al-Jordan or Jordan Marsh or any official or employee, as such, of the City or the BRA shall have any personal liability to the other or to anyone claiming through or under the other.

3.8. Governing Law; Amendment. This Agreement shall be construed as a Massachusetts agreement, is to take effect as a sealed instrument, is binding upon and inures to the benefit of the Parties hereto and their respective successors and assigns and may be cancelled, modified or amended only by a written instrument executed by the Parties hereto.

3.9. Exhibits. Any reference to any Exhibit contained within this Agreement shall be deemed to mean any Exhibit to this Agreement as from time to time amended by the Parties hereto.

3.10. Superseding Effect. This Agreement is being entered into pursuant to and, together with the Tripartite Agreement and the Development Agreement, supersedes the letter agreement dated October 31, 1977 among the City, Alstores, Sefrius Corp. and Mondev U.S.A., Inc.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed, and their respective corporate seals to be hereunto affixed and attested, as of the day and year first above written.

ALSTORES REALTY CORPORATION

By \_\_\_\_\_  
President

AL-JORDAN REALTY CORP.

By \_\_\_\_\_

JORDAN MARSH COMPANY (BOSTON)

By \_\_\_\_\_

THE CITY OF BOSTON

By \_\_\_\_\_  
Mayor

By \_\_\_\_\_  
Commissioner of Real Property

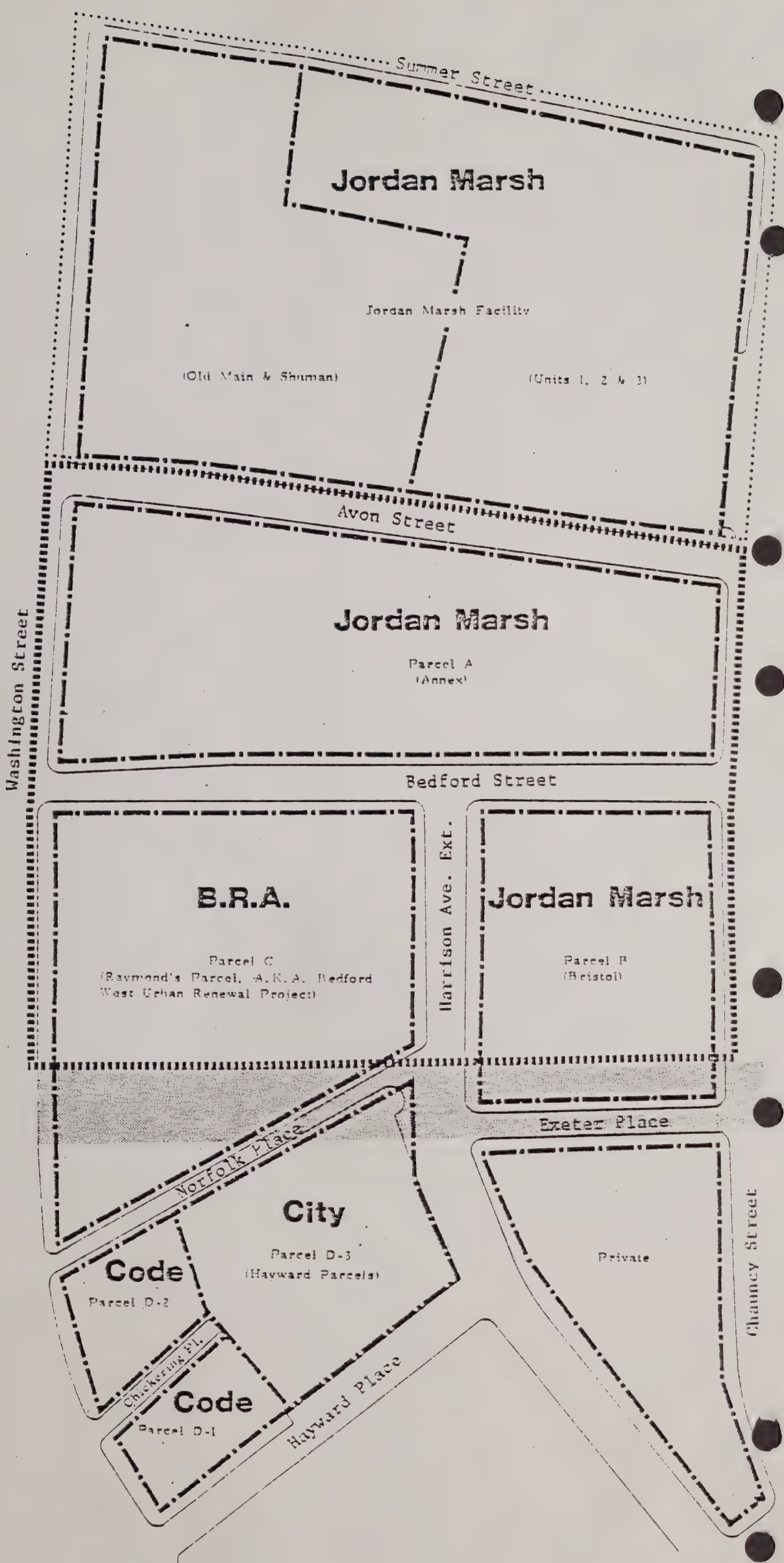
BOSTON REDEVELOPMENT AUTHORITY

By \_\_\_\_\_  
Director

Property Lines

- Jordan Marsh a.k.a. Al-Jordan Tract
- Lafayette Place a.k.a. Lafayette Tract
- New Norfolk R.O.W.

0 50 100 200 300



## PERMITTED EXCEPTIONS

1. All ordinances or governmental regulations, including building or zoning ordinances, affecting said premises.
2. Real estate taxes, the payment of which is not delinquent at the Closing Date.
3. Existing violations, if any, and encroachments of buildings, stoops, footings, areas, cellars, steps, trim and cornices, if any, upon any street or highway.
4. Any facts an accurate survey of the premises would disclose, provided that the same do not render title unmarketable for the purposes for which the Properties are being purchased.
5. The provisions of Chapter 340 of the Acts and Resolves of the General Court of Massachusetts in 1939 and Chapter 109 of the Acts and Resolves of said General Court in 1956, relating to a bridge crossing Avon Street.
6. Agreement between the City of Boston acting through its Board of Street Commissioners and the Trustees of the Avon Street Trust and others dated August 16, 1939, recorded with Deeds, Book 5819, Page 510, relating to said bridge.
7. Instrument dated January 9, 1957, recorded with said Deeds, Book 7215, Page 556, executed by the City of Boston acting through its Public Improvement Commission, the Trustees of said Avon Street Trust and others relating to an extension and enlargement of said bridge.
8. Any right, title or interest of the City of Boston in the bridge spanning Avon Street.
9. The rights, easements and agreements set forth in a Taking by the City of Boston for subway purposes dated June 10, 1913, and recorded with said Deeds, Book 3736, Page 351, 353 and 374.
10. The rights, easements and agreements, connected with the construction and maintenance of a subway by the City of Boston as set forth in its deed to Frances Little dated January 2, 1920 and recorded with said Deeds, Book 4191, Page 364.
11. Subject to a license easement with Massachusetts Bay Transportation Authority with reference to right and easement to construct, alter, use and maintain stairways, escalators and passageways, etc., dated April 12, 1976, and shown as Document No. 330855, with Certificate of Title No. 87798, Registration Book 434, Page 198.
12. Mortgage from Al-Jordan Realty Corp. to The Equitable Life Assurance Society of the United States dated December 28, 1976 filed for record December 28, 1976, Book 8923, Page 571 and in Land Court as Document No. 331414 with Certificate No. 87798 in Book 434, Page 198, subordinated to the extent required by the Agreement to which this Exhibit is annexed.

ESCROW AGREEMENT

This AGREEMENT made this \_\_\_\_\_ day of \_\_\_\_\_, 1978, by and among THE CITY OF BOSTON, a municipal corporation, of the Commonwealth of Massachusetts (the "City"), ALSTORES REALTY CORPORATION, a Delaware corporation qualified to do business in the Commonwealth of Massachusetts ("Alstores"), and NEW ENGLAND MERCHANTS NATIONAL BANK, a national banking association (the "Bank").

WHEREAS, the City and Alstores are parties, among others, to a Sale and Construction Agreement dated \_\_\_\_\_, 1978, providing inter alia that Alstores shall sell and convey and that the City shall purchase and accept the Bristol and Annex parcels as defined therein; and

WHEREAS, pursuant to the Sale and Construction Agreement, the City and Alstores have requested the Bank to act as Escrow Agent and the Bank is willing to so act, upon the terms and subject to the conditions set forth in this Escrow Agreement; and

WHEREAS, the City has deposited with the Bank the sum of \$2,500,000 to be held by the Bank in escrow as required by the Sale and Construction Agreement;

NOW, THEREFORE, in consideration of the mutual covenants and agreements herein contained, the parties hereto agree as follows:

1. The Bank is hereby appointed Escrow Agent, to hold and dispose of the Escrow Fund (as hereinafter defined) in accordance with the terms hereof.

2. The Bank hereby acknowledges receipt of \$2,500,000 and agrees to hold said amount, together with any income, profits and proceeds thereof, as part of a fund (the "Escrow Fund") to be invested, reinvested, distributed and paid over as hereinafter provided.

3. The Escrow Agent shall deposit the Escrow Fund in such deposit accounts with such Authorized Depositories, or invest the Escrow Fund in such Permissible Investments, as the City shall instruct the Bank, and in the absence of such instruction, the Escrow Agent shall deposit any funds in the Escrow Fund with the Bank. "Authorized Depository" means any commercial bank (including the Bank) with an office in the City of Boston having a capital and surplus in excess of \$50,000,000 which is a member of the Clearing House Association of Boston. "Permissible Investments" means (i) certificates of deposit issued by an Authorized Depository maturing not later than 90 days after acquisition thereof by the Escrow Agent and (ii) securities issued or guaranteed by the United States maturing not later than 90 days after the acquisition thereof by the Escrow Agent.

4. If the Escrow Agent shall receive from Alstores a notice in substantially the form attached as Annex I hereto, the Escrow Agent shall proceed immediately in the manner it deems most prudent to sell all securities then held in the Escrow Fund and distribute the Escrow Fund as follows: First, it shall pay to itself any fees and expenses then due and owing pursuant to paragraph 9, and Second, it shall pay to Alstores on the date specified in such notice, which shall be not sooner than ten days after its receipt of such notice, an amount equal to \$2,500,000 plus interest thereon from the date hereof to the date of payment at the rate specified below, unless prior to the time of such payment it shall have received a notice from the City in substantially the form attached as Annex II hereto, in which event it shall hold the Escrow Fund pending further joint instructions from the City and Alstores or an order of a court having

jurisdiction. The rate of interest referred to in the immediately preceding sentence shall be the rate offered by the Bank on 90-day certificates of deposit as in effect on the date hereof and at the end of each 90-day period thereafter.

5. If the amount on deposit in the Escrow Fund shall be insufficient to pay in full the amount to which Alstores is entitled under paragraph 4, the City shall pay to Alstores, promptly after the distribution from the Escrow Fund to Alstores, the excess of such deficiency over the aggregate payments from the Escrow Fund to the Escrow Agent pursuant hereto. If after the distribution to Alstores of the amount to which it is entitled under paragraph 4 and to the Escrow Agent of any fees and expenses to which it is entitled hereunder any balance shall remain in the Escrow Fund, such balance shall be paid to the City. Any amounts remaining in the Escrow Fund 20 years from the date hereof shall be paid to the City.

6. If the sole securities in the Escrow Fund are certificates of deposit issued by the Bank, in lieu of making the distributions pursuant to paragraphs 4 and 5 by selling securities, the Escrow Agent may deliver to the order of the Party entitled thereto such certificates of deposit with such principal and accrued interest as shall equal or exceed the amounts to which such Party is entitled and, if the principal and accrued interest shall exceed such amounts, the Escrow Agent shall be reimbursed by such Party for the excess.

7. Promptly after receiving a notice in the form of Annex I hereto, the Escrow Agent shall deliver a copy thereof to the City; and promptly after receiving a notice in the form of Annex II hereto, the Escrow Agent shall deliver a copy thereof to Alstores. Any remittance, instruction, notice or other communication given hereunder

shall be in writing and delivered by registered mail or delivered by hand to the party entitled to receive the same as follows:

(a) If to Alstores:

Alstores Realty Corporation  
1114 Avenue of the Americas  
New York, New York 10036

Attention: President

with a copy:

c/o Jordan Marsh Company  
450 Washington Street  
Boston, Massachusetts 02107

Attention: President

(b) If to the City:

(c) If to the Bank:

or to such other address or addresses as the party to receive such remittance, instruction, notice or other communication shall from time to time designate by notice to the other parties. Any instruction, notice or other communication shall be effective only upon receipt.

8. The Bank hereby accepts appointment as Escrow Agent hereunder. The Escrow Agent shall be obligated to perform only such duties as are specifically set forth in the Escrow Agreement and shall not be liable for any action taken, omitted or suffered by it in good faith and believed by it to be authorized or within the discretion or right or powers conferred upon it hereby and may conclusively rely and shall be protected in acting or refraining from acting in reliance upon an order, an opinion of counsel or upon any certificate, request or other document believed by it to be genuine and to have been signed or presented by the proper party or parties.

The Escrow Agent shall not be bound by any modifications of this Escrow Agreement unless such modification is in writing and signed by the parties hereto and, if its duties as Escrow Agent hereunder are affected, unless it shall have given prior written consent thereto. If a controversy arises between one or more of the parties hereto, or between any of the parties hereto and any person not a party hereto as to whether or not or to whom the Escrow Agent shall deliver all or any portion of the Escrow Fund, or in the event that the Escrow Agent shall be uncertain as to its duties or rights hereunder or shall receive instructions with respect to the Escrow Fund which in its opinion are in conflict with any of the provisions of this Escrow Agreement, the Escrow Agent shall be entitled to refrain from taking any action other than to keep safely the Escrow Fund until it shall have been directed otherwise by a writing signed by the City and Alstores or by final order of a court of competent jurisdiction over the dispute. The Escrow Agent shall not be responsible in any manner whatsoever for any failure or inability of the City or Alstores to honor any of the provisions of the Sale and Construction Agreement. The Escrow Agent shall incur no liability hereunder whatsoever except in the event of willful misconduct or gross negligence as long as it has acted in good faith.

9. The Escrow Agent shall be entitled to payment from time to time out of the Escrow Fund of (i) a fee for its services hereunder in such amount as the parties shall agree and (ii) any out-of-pocket expenses incurred by it in performing its duties hereunder.

The Escrow Agent will report in writing every 60 days to the City and Alstores as to all transactions relating to investments of the Escrow Fund.

10. This Escrow Agreement shall bind and inure to the benefit of the parties, their successors and assigns.

11. This Escrow Agreement shall be governed by and interpreted in accordance with the laws of the Commonwealth of Massachusetts.

THE CITY OF BOSTON

By \_\_\_\_\_

\_\_\_\_\_  
Title

ALSTORES REALTY CORPORATION

By \_\_\_\_\_

\_\_\_\_\_  
Title

NEW ENGLAND MERCHANTS NATIONAL BANK

By \_\_\_\_\_

\_\_\_\_\_  
Title

NOTICE

Re: Escrow Agreement dated as of 1978,  
among your Bank, Alstores Realty  
Corporation and The City of Boston,  
and the Sale and Construction  
Agreement referred to therein

Dear Sirs:

Pursuant to paragraph 4 of the Escrow Agreement,  
we hereby notify you that the Construction Commitment Date  
referred to in the Sale and Construction Agreement occurred  
on [date to be inserted] and instruct you to deliver to us  
at [time and date to be inserted] at [address to be inserted]  
your official bank check in the lesser of the following  
amounts: (a) an amount equal to \$2,500,000 plus interest  
from [insert Closing Date] to the date of payment at the  
rate provided in paragraph 4 of the Escrow Agreement and  
(b) the entire amount of the Escrow Fund.

Very truly yours,

ALSTORES REALTY CORPORATION

By \_\_\_\_\_

NOTICE

Re: Escrow Agreement dated as of  
1978, among your Bank, Alstores Realty  
Corporation and The City of Boston and  
the Sale and Construction Agreement  
referred to therein

Dear Sirs:

Pursuant to paragraph 4 of the Escrow Agreement,  
we hereby instruct you not to make payment in accordance  
with the letter dated \_\_\_\_\_, to you from  
Alstores Realty Corporation except pursuant to subsequent  
joint instructions from Alstores Realty Corporation and The  
City of Boston or an order of a court having jurisdiction.

Very truly yours,

THE CITY OF BOSTON

By \_\_\_\_\_

## PROMISSORY NOTE NO. (1)

\$200,000

New York, New York  
[Closing Date]

LAFAYETTE PLACE ASSOCIATES, a Massachusetts partnership (the "Company"), FOR VALUE RECEIVED, hereby promises to pay to the order of ALSTORES REALTY CORPORATION (the "Payee"), at its office located at 1114 Avenue of the Americas, New York, New York, on the (2) anniversary of the date of this Note the principal sum of Two hundred thousand Dollars in lawful money of the United States of America.

The Company promises also to pay simple interest on the unpaid principal amount hereof in like money at said office (i) from the date of this Note until maturity (whether by acceleration or otherwise) at the rate not less than 8-1/2% nor more than 10-1/2% per annum but otherwise 1-1/2% in excess of the prime commercial lending rate of Manufacturers Hanover Trust Company in effect from time to time, such interest to be payable at maturity (whether by acceleration or otherwise) and (ii) after such maturity until paid at the rate of 11-1/2 percent per annum, such interest to be payable on demand.

This Note is one of ten Promissory Notes (the "Notes") delivered by the Company on [Closing Date] to the Payee. Upon the continuation for 15 days of any default in the payment of any part of the interest upon or principal of any of the Notes as and when the same shall become due and payable, or if the Company shall be judicially declared bankrupt or insolvent according to law or if a receiver, guardian, trustee in involuntary bankruptcy or other similar officer shall be appointed to take charge of all or any substantial part of the Company's property by a court of competent jurisdiction, or if a petition shall be filed for the reorganization of the Company under any provision of the Bankruptcy Act or similar legislation now or hereafter enacted and such proceeding is not dismissed within 30 days after it has begun or if the Company shall file a petition for such reorganization, under any provisions of the Bankruptcy Act or similar legislation now or hereafter enacted and providing a plan for a debtor to settle, satisfy or extend the time for the payment of debts, then in any of such cases the Payee may declare the principal of all of the Notes to be due and payable immediately, and upon any such declaration the same shall become due and payable.

---

The Note is subject to completion as follows:

<u>(1)</u>	<u>(2)</u>
1	first
2	second

<u>(1)</u>	<u>(2)</u>
3	third
4	fourth
5	fifth
6	sixth
7	seventh
8	eighth
9	ninth
10	tenth

The Company may, at its option, at any time prior to the maturity of this Note, prepay without penalty, all or any part of the principal amount of this Note; provided, however, that (1) if less than all of the principal amount of this Note is prepaid, the principal amount so prepaid shall be \$100,000 or an integral multiple thereof, and (2) the Company shall not prepay any part of the principal amount of this Note unless and until it shall have prepaid in full any of the Notes still outstanding having a maturity date later than the maturity date of this Note.

LAFAYETTE PLACE ASSOCIATES

ATTEST:

By MONDEV MASS., INC., General Partner

\_\_\_\_\_

By \_\_\_\_\_  
(Title)

ATTEST:

By SEFRIUS CORP., General Partner

\_\_\_\_\_

By \_\_\_\_\_  
(Title)

## FORMS OF DEEDS

Deed to Bristol Parcel

ALSTORES REALTY CORPORATION, a Delaware corporation, having a principal place of business at 1114 Avenue of the Americas, New York City, New York, in consideration of

Dollars paid, the receipt of which is hereby acknowledged, hereby grants to THE CITY OF BOSTON, a municipal corporation in the Commonwealth of Massachusetts, with QUITCLAIM COVENANTS, a parcel of land, sometimes known as the Bristol parcel, situated in Boston, Commonwealth of Massachusetts, shown on a plan hereinafter mentioned and bounded and described as follows:

NORTHWESTERLY by the southerly sideline of Harrison Avenue Extension 191.52 feet;  
NORTHEASTERLY by the southerly sideline of Bedford Street 150.22 feet;  
SOUTHEASTERLY by the northerly sideline of Chauncy Street 188.03 feet; and  
SOUTHWESTERLY by the northerly sideline of Exeter Place 142.12 feet.

Containing according to said plan 28,874 square feet more or less.

Said plan, recorded herewith, is entitled "Plan of Land In Boston, Mass." dated May 15, 1975, and drawn by William S. Crocker, Inc.

Together with all right, title and interest of the Grantor, under, in and to those portions of Exeter Place, Harrison Avenue Extension, Bedford Street and the portion of Chauncy Street contiguous to the premises herein conveyed.

Subject to the terms and provisions of a license to maintain an area under the sidewalk in front of that portion of Bedford Street formerly numbered 33-35 Bedford Street, and

For title of the Grantor, see deed from Tournier Holding Corp. to the Grantor, dated October 28, 1948, and recorded with said Deeds, Book 6479, Page 123 (the third parcel described therein).

ALSTORES REALTY CORPORATION

By: \_\_\_\_\_

On this                      day of                      , 1978, before me appeared                      , to me personally known, who, by me being duly sworn, did say that he is the Vice President of ALSTORES REALTY CORPORATION, a Delaware corporation qualified to do business in the Commonwealth of Massachusetts, that the seal affixed to the foregoing instrument is the corporate seal of said Corporation, and that said instrument was signed and sealed in behalf of said Corporation by authority of its Board of Directors, and said                      acknowledged said instrument to be the free act and deed of said Corporation.

D-2

Deed to Annex Parcel

ALSTORES REALTY CORPORATION, a Delaware corporation, having a principal place of business at 1114 Avenue of the Americas, New York City, New York, in consideration of

Dollars paid, the receipt of which is hereby acknowledged, hereby grants to THE CITY OF BOSTON, a municipal corporation in the Commonwealth of Massachusetts, with QUITCLAIM COVENANTS, a parcel of land, together with the improvements thereon, sometimes known as the Annex parcel, situated in said Boston, shown on a plan hereinafter mentioned and bounded and described as follows:

NORTHEASTERLY by the southerly sideline of Avon Street by five lines measuring 40.09 feet, 36.20 feet, 196.53 feet, 76.13 feet and 70.36 feet;

SOUTHEASTERLY by the northerly sideline of Chauncy Street by two lines measuring 17.38 feet and 93.07 feet;

SOUTHWESTERLY by the northerly sideline of Bedford Street by three lines measuring 68.23 feet, 248.14 feet and 107.38 feet; and

NORTHWESTERLY by the southerly sideline of Washington Street by two lines measuring 36.35 feet and 131.76 feet.

Containing according to said plan 58,295 feet more or less.

Included as part of the improvements herein conveyed is the bridge spanning Avon Street connecting the above described parcel with the building on the opposite side of the street.

Said plan, recorded herewith, is entitled "Plan of Land in Boston, Mass." dated May 15, 1975, and drawn by William S. Crocker, Inc.

Together with all right, title and interest of the Grantor of, under, in and to those portions of Avon, Chauncy and Washington Streets as are contiguous to the premises herein conveyed.

Subject to the terms and provisions of a license to maintain a coal hole under the sidewalk in front of that portion of Avon Street formerly numbered 15 Avon Street, and indemnity agreement related thereto, dated May 5, 1888, and recorded with the Suffolk County Registry of Deeds, Book 1820, Page 467, insofar as the same is presently in force and effect.

Subject to the provisions of Chapter 340 of the Acts of 1939 and Chapter 109 of the Acts of 1956, and further subject to two Agreements between the City of Boston and Trustees of Avon Street Trust et als., dated August 16, 1939, and January 9, 1957, respectively, and recorded with said Deeds, Book 5819, Page 510 and Book 7215, Page 556, respectively.

For title of the Grantor, see deed from Tournier Holding Corp. to the Grantor, dated October 28, 1948, and recorded with said Deeds, Book 6479, Page 123 (the first and second parcels therein); deed from F. W. Woolworth Co. to the Grantor, dated January 15, 1959, and recorded with said Deeds, Book 7369, Page 239; deed from Beech Hill Realty, Inc. to the Grantor, dated October 4, 1961, and recorded with said Deeds, Book 7594, Page 125; and deed from Philip B. Buzzell et. al., Trustees of Avon Street Trust to the Grantor, dated September 15, 1957, and recorded with said Deeds, Book 7272, Page 441.

IN WITNESS WHEREOF, said ALSTORES REALTY CORPORATION has caused its corporate seal to be hereto affixed and



MAINTENANCE AND EASEMENT AGREEMENT

Dated , 197

among

AL-JORDAN REALTY CORP.

JORDAN MARSH COMPANY

LAFAYETTE PLACE ASSOCIATES

and

THE CITY OF BOSTON

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MAINTENANCE AND EASEMENT AGREEMENT dated as of  
 , 1978 among AL-JORDAN REALTY CORP., a Massachusetts corporation ("Al-Jordan"), and JORDAN MARSH COMPANY (Boston), a Massachusetts corporation ("Jordan Marsh" and, so long as it shall own a fee or leasehold estate in the Jordan Marsh Facility referred to below, collectively with Al-Jordan referred to as "Jordan"), LAFAYETTE PLACE ASSOCIATES, a Massachusetts partnership ("Lafayette"), and, but only to the limited extent herein expressly set forth, THE CITY OF BOSTON, a municipal corporation (the "City"), acting by and through its Mayor and its Real Property Board. Jordan, the City and Lafayette are each hereinafter sometimes called "Party" and sometimes hereinafter collectively called "Parties".

WHEREAS, Alstores Realty Corporation, a Delaware corporation affiliated with Jordan ("Alstores"), Al-Jordan, Jordan Marsh and the City are parties to an Agreement dated  
 , 1978 (the "Sale and Construction Agreement") providing for the sale by Alstores and the purchase by the City of certain parcels of land located in downtown Boston, Massachusetts, described as the "Annex" and "Bristol" parcels on the site plan attached hereto as Exhibit A together with certain appurtenant easements and rights, including rights in certain ways;

WHEREAS, as provided in the Sale and Construction Agreement, Alstores has demolished the previously existing structures on certain parcels of land described collectively as the "Old Main and Shuman" parcel on the site plan attached hereto as Exhibit A, and has constructed thereon a new retail facility (which, together with the structures on a certain parcel of land described in Exhibit A as "Units 1, 2 and 3", constitute the "Jordan Marsh Facility");

WHEREAS, as provided in the Sale and Construction Agreement, the City has acquired or will acquire certain other parcels of land which, together with the Annex and Bristol parcels, are described in Exhibit A hereto as "Lafayette Place";

WHEREAS, the City, the Boston Redevelopment Authority and Lafayette are parties to a Tripartite Agreement, dated as of \_\_\_\_\_, 1978 (the "Tripartite Agreement"), providing for the sale by the City and the purchase by Lafayette of air rights in, under and over Lafayette Place together with other rights appurtenant to such air rights, for the construction by the City of a garage (the "Garage") at and below the grade of Lafayette Place and other public improvements and for the construction in such air rights by Lafayette of a hotel, retail and commercial complex (said complex to be constructed by Lafayette being herein referred to as the "Lafayette Place Complex");

WHEREAS, Alstores and Lafayette are parties to an Agreement dated as of \_\_\_\_\_, 1978 (the "Development Agreement"), pursuant to which Lafayette and Alstores agree to undertake certain construction obligations relative to the Jordan Marsh Facility and the Lafayette Place Complex;

WHEREAS, it is the mutual desire of the Parties, in furtherance of the agreements referred to above, to exchange with each other certain easements and other rights in, to, through, upon, over, under and across their respective parcels and to make certain other covenants, agreements and provisions all as hereinafter more specifically set forth.

NOW, THEREFORE, in consideration of the mutual covenants contained herein and intending to be legally bound hereby, the Parties agree as follows:

Article One:

Definitions; Additions or Replacements

1.1. Terms Defined. Whenever used in this Agreement, the following terms defined in this Article have the following respective meanings:

"Combined Site" means the aggregate of the Jordan Tract and the Lafayette Tract.

"Fiscal Period" means a period of 12 consecutive calendar months commencing on the first day on which the Jordan Marsh Facility and any portion of the Lafayette Place Complex shall both be open for business and each period of 12 consecutive months thereafter.

"Jordan Tract" means the real property, whether or not under single ownership, designated as such on the site plan attached hereto as Exhibit A, and any structures from time to time located thereon.

"Lafayette Tract" means the real property, whether or not under single ownership, designated as such on the site plan attached hereto as Exhibit A, and any structures from time to time located thereon.

"Passageway" means the pedestrian passageway through the Jordan Marsh Facility on the Jordan Tract at the ground floor level extending from Summer Street to the Lafayette Tract in the location shown on the plan attached hereto as Exhibit C, and all accessory components forming a part thereof or used in connection therewith.

"Successor Facility" means (i) in the case of the Jordan Marsh Facility, any retail department store having a

gross area of 200,000 square feet, including substantial selling space located on the main and second floors of the Jordan Marsh Facility adjacent to the entrances into the Lafayette Place Complex, and (ii) in the case of the Lafayette Place Complex, any complex of structures, in whatever form of ownership, devoted to hotel, retail, commercial, or other non-manufacturing and non-warehousing use, provided, in either case, that such uses shall not be incompatible with the calibre and quality of the operations of the Jordan Marsh Facility or the Lafayette Place Complex, as the case may be.

"Truck Ramp" means the ramp and access area entering the Jordan Marsh Facility at grade from Chauncy Street and providing a single means of access to separate subterranean loading docks serving the Jordan Marsh Facility and the Lafayette Place Complex, and designated by shading on the plan attached hereto as Exhibit B and all accessory components forming a part thereof or used in connection therewith, except that the Truck Ramp shall not include the security closures serving exclusively the Jordan Marsh Facility and the Lafayette Place Complex, respectively, or any areas lying behind such security closures or, except as provided in Section 2.2(f), the area shown on such plan with cross-hatching.

1.2. Additions or Replacements. Notwithstanding anything to the contrary contained in Section 1.1, or elsewhere in this Agreement, any reference in any definition contained in Section 1.1 or elsewhere in this Agreement to any improvement shall be deemed also to refer to any expansion, reconstruction or replacement thereof pursuant to the provisions of this Agreement.

Article Two:

Grant of Easements

2.1. Definitions and Documentation. This Article Two sets forth certain easements and the terms and conditions thereof which certain of the Parties hereby grant to certain of the other Parties. As used in this Article, "in", when used with respect to an easement granted "in" a particular Tract, shall mean, as the context may require, "in", "to", "on", "over", "through", "upon", "across", and/or "under".

As to the easements herein granted:

(a) the grant of a particular easement by a Grantor shall bind and burden the related Tract which shall, for the purpose of this Article, be deemed to be the servient tenement; but where only a portion thereof is bound and burdened by the particular easement, only that portion thereof so bound and burdened shall be deemed to be the servient tenement;

(b) the grant of a particular easement to a Grantee shall benefit the related Tract which shall, for the purposes of this Article, be deemed to be the dominant tenement.

All easements granted in this Article Two shall exist by virtue of this Agreement, without the necessity of confirmation by any other document; and likewise, upon the permitted extinguishment, expiration or termination of any easement, in whole or in part, or its release in respect of all or any portion of any Tract, pursuant hereto, the same shall be extinguished or released or be deemed to have expired or terminated without the necessity of confirmation by any other document. However, each Party will, as to any easement(s), at the request of any other Party, upon the submission by the requesting Party of an appropriate document in form acceptable to both or all such Parties, execute and acknowledge such a document memorializing the

existence, or the extinguishment (in whole or in part), or the release in respect of all or any portion of any Tract, as the case may be, of any easement if the same shall have been so extinguished or released.

Except as herein otherwise expressly provided, all easements hereby granted in this Article Two are irrevocable, perpetual and non-exclusive and may be used, but only as appurtenant to the dominant tenement or any part thereof, in common with the owners from time to time of the servient tenement and those claiming rights therein (temporary or otherwise) by, through or under either of such owners.

2.2. Easement for Truck Ramp.

(a) Jordan grants to Lafayette the right and easement to use the Truck Ramp for vehicular travel from Chauncy Street to the subterranean loading facilities in the Lafayette Place Complex. Jordan grants to the City the right and easement to use the Truck Ramp to the extent necessary to service the public areas of the Lafayette Place Complex.

(b) Lafayette agrees that it will cause (i) that part of the Lafayette Place Complex owned by it that opens upon the Truck Ramp to be heated and ventilated and the temperature therein maintained within five degrees Fahrenheit of the temperature maintained by Jordan in the Truck Ramp, and (ii) positive air pressure to be maintained in those parts of the Lafayette Place Complex owned by it that open upon the Truck Ramp as compared to the air pressure maintained by Jordan in the Truck Ramp. The aforesaid agreements of Lafayette are subject to the condition that the temperature and air pressure maintained by Jordan are reasonable under the circumstances.

(c) Jordan covenants with Lafayette to keep, maintain, repair, manage and operate the Truck Ramp in good and clean order, operation, condition and repair and in

conformity with all requirements of law. Without limitation upon the foregoing, Jordan's obligations shall include duties to keep the Truck Ramp sprinklered, paved, marked, illuminated, policed, controlled by the traffic signal control system (to be installed pursuant to the Development Agreement), drained, cleared of refuse, heated and ventilated. Jordan shall make and use its best efforts to enforce reasonable rules and regulations of general application for the supervision, control and use of the Truck Ramp. Such rules and regulations and any amendment thereof shall not be effective without the prior approval of Lafayette, which shall not be unreasonably withheld, qualified or delayed, and may (i) have particular regard to the special security requirements of the Jordan Marsh Facility and the Lafayette Place Complex and the effect on each of the Truck Ramp (ii) prohibit the parking of any vehicles or any part thereof within the Truck Ramp. Except as otherwise agreed to in writing by Lafayette and except in emergencies or other temporary situations beyond the reasonable control of Jordan, the Truck Ramp shall be available for use by Lafayette 24 hours a day, 7 days a week.

(d) Without limitation upon the foregoing grant to Lafayette, the same includes the right to repair and reconstruct the Truck Ramp and all appurtenances thereto without, however, imposing any such obligation on Lafayette provided, however, such right shall be exercised only if (x) the Truck Ramp shall have become physically or practically impassable, (y) Lafayette shall have given Jordan written notice of such condition and (z) Jordan shall have failed for five days after receipt of such notice to take all necessary action to commence repair or reconstruction or having taken such action, shall have failed diligently to

continue repair or reconstruction to completion. All costs incurred by Lafayette in performing Jordan's obligations shall be promptly reimbursed by Jordan upon being billed therefor (except to the extent that Lafayette would have been obligated under Section 2.2(e) hereof to reimburse Jordan if such costs had been incurred by Jordan) and may be offset against sums due by Lafayette to Jordan under this Agreement to the extent such reimbursement is not made.

(e) Except as provided below, Jordan shall promptly pay for all costs incurred in connection with the performance of its obligations under this Agreement relative to the Truck Ramp during each Fiscal Period. For each Fiscal Period, Lafayette agrees to reimburse Jordan for (i) any costs incurred during such Fiscal Period by reason of the Truck Ramp's being open when no part of the Jordan Marsh Facility is open and (ii) one-half of the balance of such costs allocable to the Truck Ramp. Notwithstanding the foregoing, if the Truck Ramp is not regularly used by Lafayette as its main service vehicle entrance then the Parties shall renegotiate and reduce in a fair and equitable manner the share of such costs reimbursable by Lafayette to Jordan.

At least 60 days prior to the commencement of each Fiscal Period (180 days prior to the first fiscal Period) Jordan shall forward to Lafayette a budget (appropriately itemized and broken down) for the Truck Ramp for the next following Fiscal Period. Budget items shall include but not be limited to costs of electricity, steam, gas (for heating), central monitoring and other

security services, cleaning, maintenance, repairs, and payroll and other administrative expenses reasonably attributable to the Truck Ramp but shall not include real estate taxes and insurance premiums. Lafayette shall forthwith review and make comments upon such proposed budget to Jordan following which Jordan and Lafayette shall agree upon such costs and the allocation of certain elements thereof. If agreement on a proposed budget relating to the Truck Ramp is not reached, then the budget for the preceding Fiscal Period shall be used, subject to final adjustment as herein provided. Thereafter, commencing upon the first day of the Fiscal Period to which such budget relates, Lafayette shall pay to Jordan in equal quarterly installments one-half (1/2) of the portion of the proposed budget relative to the Truck Ramp. Within 60 days after the close of each Fiscal Period Jordan and Lafayette shall review and agree upon the actual expenditures made for the Truck Ramp for such Fiscal Period and final adjustments shall be made, with Lafayette paying any balance due to Jordan or Jordan refunding any excess payments to Lafayette.

Each Party shall supply such information as the other party may reasonably request and is reasonably available in order to enable the foregoing provisions to be fairly administered.

(f) Lafayette shall have the non-exclusive right to use the area designated by cross-hatching on the plan attached hereto as Exhibit B for the sole purpose of enabling trucks to head into such area in order that they may back up to the loading docks within the Lafayette Place Complex. Such right shall be subject to the condition that (i) the

use of such area by trucks going to the Lafayette Place Complex shall not materially interfere with the use of such area by Jordan or trucks going to the Jordan Marsh Facility or the access of Jordan to its compactor which is adjacent to such area and (ii) except as provided in the next sentence, the use of such area by Lafayette shall be restricted to such times as the existing security closure is open. If the existing security closure is removed and new security closures are installed at the locations shown on Exhibit B hereto, Lafayette shall be entitled, subject to the condition stated in clause (i) of the preceding sentence, to use such area for the purposes stated above 24 hours a day, 7 days a week, and such area shall be deemed part of the Truck Ramp.

(g) If any truck shall be too long to position itself for backing into the Lafayette Place Complex by using only the Truck Ramp and the area referred to in Section 2.2(f), Lafayette shall have the non-exclusive right, to the extent necessary for such truck to back into the Lafayette Place Complex and for no other purpose, to bring such truck into that part of the truck court floor forming a rectangle the corners of which are designated on Exhibit B hereto as H6, G6, G8 and H8. Such right shall be subject to the condition that the use by trucks going to the Lafayette Place Complex of that part of the truck court floor so designated (i) shall not materially interfere in any way with the use thereof by Jordan or trucks going to the Jordan Marsh Facility and (ii) shall be restricted to such times as the existing security closure or, if it shall be removed and the proposed new security closures shown on Exhibit B hereto installed, such new security closures shall be open.

(h) At any time after December 31, 2042, Jordan shall have the right to terminate the rights and easement

granted to Lafayette pursuant to this Section 2.2. Such termination may be effected only by notice to such effect given to Lafayette or its successor in interest.

2.3. Easement for Passageway.

(a) Jordan grants to Lafayette the right and easement for its tenants, licensees, customers, agents and employees, and to the City the right and easement for persons using the Garage and the public areas of the Lafayette Place Complex, to use the Passageway for pedestrian travel between Summer Street and the Lafayette Place Complex.

(b) Lafayette agrees that it will cause (i) the temperature in that part of the Lafayette Place Complex owned by it that opens upon the Passageway to be maintained within three degrees Fahrenheit of the temperature maintained by Jordan in areas owned by Jordan abutting the Passageway and (ii) positive air pressure to be maintained in those parts of the Lafayette Place Complex owned by it that open upon the Passageway as compared to the air pressure maintained by Jordan in the Passageway. The aforesaid agreements of Lafayette are subject to the condition that the temperature and air pressure maintained by Jordan are reasonable for a department store such as Jordan Marsh or any Successor Facility then occupying the Lafayette Place Complex.

(c) When the retail department store on the Jordan Marsh Facility is open for business, the door separating the Passageway from Summer Street and the door separating the Passageway from the Lafayette Place Complex (the "End Doors") shall be open or unlocked, all retractable partitions separating the Passageway from the surrounding store shall be retracted and no obstruction to pedestrian access between Summer Street and the Lafayette Place Complex shall be placed or allowed to remain within the Passageway. At all other times the End Doors shall

remain unlocked and the Passageway shall remain available for unobstructed pedestrian access between Summer Street and the Lafayette Place Complex during such hours as Lafayette in its sole discretion shall determine, except that (i) Jordan may close and lock the End Doors in the case of emergencies or other temporary situations dangerous to it and (ii) if the Passageway shall be used other than for its intended purpose of access between Summer Street and the Lafayette Place Complex and Jordan shall give Lafayette reasonable prior notice (not to be less than five days) that keeping the End Doors unlocked during such hours as are specified in such notice has resulted in the creation of a nuisance or an otherwise unsafe or unsanitary condition as specified in said notice, Jordan may close and lock the End Doors during the hours specified in said notice unless Lafayette shall take such measures (which may include the stationing of a guard in the Passageway) as shall be required to prevent such nuisance or other condition.

(d) Following its initial construction, all changes to the design and decoration features of the interior of the Passageway and the implementation and payment of costs for such changes shall be subject to mutual agreement of Jordan and Lafayette.

(e) Except as hereinafter provided in this subparagraph (e), Jordan shall, at its own expense, keep the Passageway illuminated, cleaned, cleared of refuse, heated, ventilated, air conditioned, painted and in good state of repair and, through use of security personnel and systems used by it to provide security for the retail department store, provide reasonable security for the Passageway. Lafayette shall, at its own expense, during such hours as the retail department store on the Jordan Marsh Facility is not open for business, provide illumination, heating,

ventilation, air conditioning and security (through security guards or closed circuit television surveillance systems or other security systems) for the Passageway, using for these purposes sources of air supply and electricity within the Lafayette Place Complex. Lafayette shall have the right to perform obligations of Jordan with respect to the Passageway without, however, imposing any such obligations on Lafayette; provided, however, such right shall be exercised only if (x) the Passageway shall have become physically or practically impassable, (y) Lafayette shall have given Jordan written notice of such condition and (z) Jordan shall have failed for 5 days after receipt of such notice to take all necessary actions to commence maintenance, repair or reconstruction or, having taken such action, shall have failed diligently to continue such maintenance, repair or reconstruction to completion. All costs incurred by Lafayette in performing Jordan's obligations shall be reimbursed by Jordan upon being billed therefor (except to the extent that Lafayette would have been obligated under this Section 2.3(e) to reimburse Jordan if such costs had been incurred by Jordan) and may be offset against sums due by Lafayette to Jordan under this Agreement to the extent such reimbursement is not made.

For each Fiscal Period, Lafayette shall reimburse to Jordan the following costs incurred by Jordan:

(i) 50% of any costs incurred by Jordan during such Fiscal Period in keeping the Passageway, End Doors and retractable partitions painted and in good state of repair; and

(ii) any costs incurred during such Fiscal Period by Jordan in providing security or in

cleaning or clearing the Passageway of refuse that would not have been incurred in the absence of such Passageway.

At least 60 days prior to the commencement of each Fiscal Period (180 days prior to the first Fiscal Period), Jordan shall forward to Lafayette a budget and statement of costs incurred for the Passageway for the next following Fiscal Period, which shall properly itemize and break down the aforesaid costs which are to be shared or borne by Lafayette. Lafayette shall forthwith review such proposed budget and promptly notify Jordan of any items in the budget which it disputes. If it shall fail to notify Jordan within 30 days after receipt of such proposed budget of any item which it disputes, Lafayette shall be deemed to have agreed to such budget. If agreement on a proposed budget relating to the Passageway is not reached, then the budget for the preceding Fiscal Period shall be used, subject to final adjustment as herein provided. Thereafter, commencing on the first day of the Fiscal Period to which such budget relates, Lafayette shall pay to Jordan in equal quarterly installments the portion of such budget for which Lafayette shall be obligated to reimburse Jordan as hereinabove provided. Within 60 days after the close of each Fiscal Period, Jordan and Lafayette shall review and agree upon the actual expenditures made for the Passageway for such Fiscal Period and final adjustments shall be made, with Lafayette paying any balance due to Jordan or Jordan refunding any excess payments to Lafayette.

After completion of the initial construction of the entrance (including, without limitation, doors, display cases and canopy) to the Passageway from Summer Street shown on Exhibit C hereto and the initial construction (if any) of an entrance to the subway at such location, Jordan shall not

make any material alterations to the design of said entrances except with the consent of Lafayette or as required by law or any governmental authority.

(g) At any time after December 31, 2042, Jordan shall have the right to terminate the right and easement granted to Lafayette pursuant to this Section 2.3. Such termination may be effected only by notice to such effect given to Lafayette or its successor in interest.

2.4. Structural Easements. The Jordan Marsh Facility and the Lafayette Place Complex will abut at their southern and northern sidelines, respectively, approximately along the northern sideline of the public way now or formerly known as Avon Street. The Parties desire to establish the right of Jordan to continue the maintenance of certain presently existing encroachments by subsurface portions of the Jordan Marsh Facility in said former way and to provide for future easements, for structural purposes, benefiting both the Jordan Marsh Facility and the Lafayette Place Complex. Consistent therewith:

(a) The City and Lafayette hereby grant to Jordan an easement to maintain the presently existing subsurface encroachments shown on Exhibit D.

(b) The City, Lafayette and Jordan hereby each grant to the other non-exclusive easements appurtenant to the property of each for the purpose of constructing and maintaining foundations and footings.

The foundations, footings, walls and other structural parts of the Jordan Marsh Facility and the Lafayette Place Complex were not designed for and shall not be used for structural support of structures on the Lafayette Tract or on the Jordan Tract, respectively.

Where the installation or maintenance of supports in or affecting the walls or other components of any structure on either the Jordan Tract or the Lafayette Tract shall make the same necessary, the Party undertaking such installation or maintenance agrees to repair and restore such walls or other components at its own expense. Such Parties shall make proper installation of such supports and such footings and shall maintain all such supports and such footings in good condition and state of repair at all times. Further, in the exercise of its rights hereunder, each Party shall take such measures as shall be required to avoid unreasonable interference with the use of the Tract of another Party and the businesses thereon and all damage caused by the exercise of rights hereunder to the property of another Party shall be forthwith corrected by and at the expense of the Party causing such damage so that the property so damaged shall be restored to substantially the condition in which it was prior to such damage. Each party hereby agrees to defend, indemnify and hold harmless the others from any and all expenses, costs or liability for any injury or damage which may arise or be claimed to have arisen out of the exercise by the indemnifying Party of its rights hereunder.

#### Article Three:

##### Other Easements, Licenses and Rights to use of Jordan Marsh Facility and Lafayette Place Complex

3.1. Definitions and Documentation. This Article Three sets forth certain other easements, licenses and rights and the terms and conditions thereof which certain of the Parties hereby grant to certain of the other Parties.

As used in this Article, "in", when used with respect to an easement, license or right granted "in" a particular Tract, shall mean, as the context may require, "in", "to", "on", "over", "through", "upon", "across", and/or "under".

All such easements, licenses, and rights granted in this Article shall exist by virtue of this Agreement, without the necessity of confirmation by any other document; and likewise, upon the permitted extinguishment, expiration or termination of any easement, license, or right in whole or in part, or its release in respect of all or any portion of any Tract, pursuant hereto, the same shall be extinguished or released or be deemed to have expired or terminated without the necessity of confirmation by any other document. However, each Party will, as to any easement(s), license(s), or rights(s), at the request of any other Party, upon the submission by the requesting Party of an appropriate document in form acceptable to the relevant other Parties, execute and acknowledge such a document memorializing the existence, or the extinguishment (in whole or in part), or the release in respect of all or any portion of any Tract, as the case may be, of any easement, license, or right if the same shall have been so extinguished or released.

Except as herein otherwise expressly provided, all easements, licenses and rights hereby granted in this Article Three are irrevocable, perpetual and nonexclusive and may be used in common with the owners from time to time of the Tract benefitted thereby or any part thereof and those claiming rights therein (temporary or otherwise) by, through or under any of such owners.

3.2. Rights to use of Jordan Marsh Facility, and Lafayette Place Complex. In recognition of the fact that the Jordan Marsh Facility and Lafayette Place Complex are designed and intended to appear and to be used as an integrated commercial complex, effective at the commencement of the first Fiscal Period:

(a) Lafayette and the City grant to Jordan and its tenants, licensees, customers, agents and employees, the non-exclusive right and license for unimpeded access to the Lafayette Place Complex at the abutting openings of the Jordan Marsh Facility and the Lafayette Place Complex as shown on Exhibit E hereto and, to the extent that tenants, licensees, customers, agents and employees of Lafayette shall have access to the Garage, through the Lafayette Place Complex to the Garage, provided that access to the Garage shall not be deemed to include corridors, secured entrances, or other access, not available generally to persons within the Lafayette Place Complex. Such right and license shall always be exercised:

- (i) in common with others entitled thereto;
- (ii) without any right of priority in the use of or access to the same over others entitled thereto;
- (iii) subject to all reasonable rules and regulations imposed by Lafayette upon all users;
- (iv) subject to the establishment by Lafayette of the schedule of days and hours during which the same are to be open, provided that in all events the same shall remain open at such times as the Jordan Marsh Facility shall be open;
- (v) subject to the right of Lafayette to make such use of and to rearrange and place structures in adjacent common areas as Lafayette may from time to

time desire so long as access from the Jordan Marsh Facility remains unimpeded; and

(vi) subject to the right of Lafayette to terminate such access to the Lafayette Place Complex if a department store doing business under the name of Jordan Marsh or a Successor Facility ceases to be operated on the Jordan Tract.

(b) Jordan grants to Lafayette and its tenants, licensees, customers, agents and employees the non-exclusive right and license for unimpeded access to the Jordan Marsh Facility at the abutting openings of the Jordan Marsh Facility and Lafayette Place Complex, as shown on Exhibit E hereto. Such right and license shall always be exercised:

(i) in common with others entitled thereto;

(ii) without any right of priority in the use of or access to the same over others entitled thereto;

(iii) subject to all reasonable rules and regulations imposed by Jordan upon all users;

(iv) subject to the establishment by Jordan of the schedule of days and hours during which the same are to be open provided that, in all events, the same shall remain open when the Jordan Marsh Facility is open;

(v) subject to the right of Jordan to make such use of and to rearrange and place structures in areas adjacent thereto as Jordan may from time to time desire so long as access from the Lafayette Place Complex remains unimpeded; and

(vi) subject to the right of Jordan to terminate the same at all abutting levels if the Lafayette Place Complex or a Successor Facility ceases to be operated on the Lafayette Tract.

(c) with respect to certain of the areas subject to the right and license granted to Jordan and Lafayette in subparagraphs (a) and (b), above, for so long as such right and license shall be in effect:

(i) Jordan agrees that when the Jordan Marsh Facility is open there shall be direct and unimpeded access from the location marked on Exhibit E hereto as "Second Floor Access" to the main customer circulation aisle system in the Jordan Marsh Facility, and

(ii) Lafayette agrees that when the Jordan Marsh Facility is open there shall be direct and unimpeded access from all locations referred to in clause (i) above to the main public pedestrian aisle system of the Lafayette Place Complex.

(d) For a distance of 50 feet from the openings between the Jordan Marsh Facility and the Lafayette Place Complex there shall not occur at any time within the Lafayette Place Complex without the consent of Jordan, (i) any sales activity involving loudspeakers or similar devices creating unreasonable noise, (ii) the sale or service of food or beverages, (iii) the sale of animals, (iv) the operation of any amusement arcade or other facility having pinball machines or similar devices, or (v) the sale or display of pornographic materials.

(e) Lafayette agrees that it will cause (i) the temperature in that part of the Lafayette Place Complex owned by it that opens upon the Jordan Marsh Facility at the entrances shown on Exhibit E hereto to be maintained within three degrees Fahrenheit of the temperature maintained by Jordan in the portions of the Jordan Marsh Facility abutting such entrances and (ii) positive air pressure to be

maintained in those parts of the Lafayette Place Complex owned by it that open upon the Jordan Marsh Facility at such entrances as compared to the air pressure maintained by Jordan in the portions of the Jordan Marsh Facility abutting such entrances. The aforesaid agreements of Lafayette are subject to the condition that the temperature and air pressure maintained by Jordan are reasonable for a department store such as Jordan Marsh or any Successor Facility then occupying the Lafayette Place Complex.

(f) It is not intended that the provisions of this Section 3.2 limit the grants or rights of Lafayette set forth in Section 2.3.

3.3. Emergency Egress Easements. Lafayette and the City hereby grant to Jordan non-exclusive easements over the Lafayette Tract for the sole purpose of providing emergency egress in the event of fire from the Jordan Tract. The precise location of such easements shall be determined by Lafayette but in all events shall be such as to satisfy all legal requirements for egress from the side of the Jordan Marsh Facility presently bounded by Avon Street and to obtain approval and acceptance by all municipal authorities provided that in no event shall the locations of the openings in the wall of the Jordan Marsh Facility giving access to such easements be changed from their present locations without the consent of Jordan. The areas subject to such easements may, to the extent permitted by law, be used in conjunction with ordinary operations of the Lafayette Place Complex and as a means of providing emergency egress therefrom. Further, and notwithstanding the foregoing, Lafayette shall have the right to relocate or alter such easements as it may consider necessary or appropriate in

connection with the construction, operation, maintenance or reconstruction of the Lafayette Place Complex or any part thereof; provided, however, that any such relocation or alteration by it hereunder shall be at its expense and shall be consistent with all legal requirements for emergency fire egress from the Jordan Marsh Facility and the location of the then-existing emergency fire openings from the Jordan Marsh Facility shall not be changed. Concurrently with the initial determination of their location and thereafter upon any such relocation the Parties shall execute such documents as shall be necessary to reflect such initial location or relocation, as the case may be, of record.

Unless and until such easements shall be used by Lafayette, all costs attributable to the maintenance and operation thereof shall be borne by Jordan. However, upon any use of such easements by Lafayette to any extent whatever, all of such costs attributable to such easement used shall thereafter be borne equally by the Parties.

3.4. Easements for Air Supply and Exhaust.

Lafayette agrees that the Lafayette Place Complex shall be designed and constructed so as to provide adequate air supply and exhaust through the supply and exhaust air grilles presently existing in the south wall of Units 1 and 3 and hereby grants to Jordan an easement over the Lafayette Place Complex to the extent necessary for such purpose. Maintenance and repair of the air supply and exhaust systems shall be the responsibility and at the expense of Jordan except that if the systems shall serve the Truck Ramp or Passageway the responsibility for and the cost of maintenance and repair shall be borne as provided in Sections 2.2 and 2.3 hereof. Lafayette agrees that the design and construction of the systems shall meet with Jordan's approval.

## Article Four:

### Insurance

4.1. Liability Insurance. Commencing with the start of the first Fiscal Period at its expense Jordan shall maintain or cause to be maintained general public liability insurance against claims for personal injury or death and property damage, occasioned by accident, omission or negligence occurring upon, in, on or about the Jordan Tract and any structures thereon or improvements thereto (including the Passageway and Truck Ramp) and any sidewalks relating thereto. Lafayette shall maintained general public liability insurance against claims for personal injury or death and property damage, occasioned by accident, omission or negligence occurring upon, in, on or about the Lafayette Tract, and any structures thereon or improvements thereto (exclusive of areas subject to the Emergency Egress Easements created under Section 3.2 hereof, unless Lafayette shall use the same) and any sidewalks relating thereto, such insurance in each case to afford protection to the limit of not less than \$5,000,000 per occurrence in respect of injury or death, and such insurance against property damage to afford protection to the limit of not less \$1,000,000 per occurrence. The insurance coverage required under this Section 4.1 shall, in addition, extend to any liability of the Parties arising out of the indemnities provided for in Section 8.2 hereof. Solely with respect to such liability, the required policies shall name Jordan and Lafayette as insureds, as their respective interests may appear.

4.2. Casualty Insurance. Commencing with the start of the first Fiscal Period, Jordan shall continuously keep or cause to be kept the Jordan Marsh Facility (including the Truck Ramp and Passageway) insured, at its own expense against loss or damage by fire and such other risks

as are from time to time included in "extended coverage" endorsements available in Boston, Massachusetts, customarily maintained on comparable property in the New England area (including in all events demolition and increased cost of restoration endorsements), and in an amount at least sufficient to avoid the effect of coinsurance provisions of the policies, and in an amount not less than eighty per cent (80%) of the current actual replacement cost of the Jordan Marsh Facility (including the Truck Ramp and Passageway), but nothing herein shall require Jordan to revise insurance coverage more frequently than annually. Such policies shall contain the clauses as to the payment of the proceeds thereof described in Section 5.2 hereof. Any policies maintained by Jordan against the risks set forth in the first sentence of this Section 4.2 shall provide for waiver of subrogation against Lafayette.

4.3. Form of Policies. All insurance required by this Article to be maintained by any Party shall be effected under valid and enforceable policies issued by insurers of recognized responsibility and at rates competitive with those generally available for similar coverage in the greater Boston area. The insurance to be maintained by any Party under Sections 4.1 and 4.2 hereof may be taken out under blanket insurance policies covering other premises, property or insureds in addition to that required hereunder, but only so long as the limits required by Sections 4.1 and 4.2 hereof are maintained in effect and separately designated for the Jordan Marsh Facility and the Lafayette Place Complex, respectively. Further, such policies may provide for deductibles not to exceed as to liability insurance \$100,000 and as to casualty insurance \$100,000, provided that at the request of a Party not maintaining such insurance

such deductible sums shall be reduced by the Party maintaining such insurance upon payment by the requesting party of the additional premium charge incurred thereby.

The original or a copy of the policies (whether initial or renewal) required by this Article to be maintained by either Jordan or Lafayette, or a certificate of the insurer or its agent as to the effectiveness of such policies, shall be delivered to the other not less than 15 days prior to the date when the applicable insurance is required to be provided under this Agreement, and, thereafter, not less than 15 days prior to the expiration dates of the expiring policies. Any policy required by this Article shall provide that such policy shall not be cancelled or amended in any material respect without at least ten days' prior notice to Lafayette and Jordan.

#### Article Five:

##### Restoration

5.1. Jordan's Obligations with Respect to Restoration. In the event of any damage or destruction to or condemnation of all or any part of the Jordan Marsh Facility (including, without limitation, any damage or destruction or condemnation which interferes with or prohibits the full and unimpeded use and enjoyment of the Truck Ramp or Passageway as contemplated hereby) and as often as any such damage or destruction or condemnation shall occur, Jordan shall repair, restore and rebuild the Jordan Marsh Facility to substantially the condition existing or required to be existing prior to such damage or destruction (including, without limitation, such repair, restoration and rebuilding as is necessary to insure full and unimpeded use of the Truck Ramp and Passageway by Lafayette) in the case of a condemnation to the extent reasonably practicable except that the size of the Jordan Marsh Facility may be changed as Jordan shall determine provided that prior to December 31, 2018 there shall be at least 140,000 square feet of floor

space on the Main and Second Floors and prior to December 31, 2003 there shall be at least 400,000 square feet of floor space appropriate for use as selling area (as that term is used as of the date hereof by Allied Stores Corporation) which may include stock and fitting rooms.

The obligations of Jordan hereunder to repair, restore or rebuild shall be commenced and continued to completion with due diligence in recognition of the fact that time is of the essence and that the availability at all times of the Truck Ramp and Passageway is of utmost concern to the respective Parties. The work of repair, restoration or rebuilding, when once commenced by Jordan, shall be carried through continuously to conclusion by it, subject only to delays in obtaining labor or materials or other matters (but expressly excepting financing matters) which are beyond Jordan's reasonable control. The policy or policies of insurance required of Jordan pursuant to Section 4.2 hereof shall contain a clause providing that any loss under the same shall be payable, to the extent required for the repair, restoration or rebuilding of the Jordan Marsh Facility as required hereby, to The First National Bank of Boston, or to such other bank or trust company as Jordan and Lafayette may designate, or, if Jordan so requires, to the institutional holder of any mortgage on the Jordan Tract, in each case, as trustee; it being understood, however, that all amounts collected on any such policy or policies shall be made available to Jordan for the repair, restoration or rebuilding, hereby required and shall be paid out by the said trustee, from time to time as the work of repair, restoration and rebuilding shall progress, upon architects' certificates (by architects licensed to do business in the Commonwealth of Massachusetts), showing the

application of the amount paid for such repairs, restoration or rebuilding. If the damage is such that the insurance award is for less than \$250,000 then the insurance award shall be paid directly over to Jordan, without the necessity of payment to the trustee, as otherwise provided for in this Article; but this shall not be construed as relieving Jordan from the terms of this Article. It is agreed that any excess of money received from insurance remaining with the trustee after the required reconstruction or repair has been completed shall be paid to Jordan.

5.2. Mortgage and Insurance Proceeds. Any mortgage placed on the Jordan Tract, or any renewals or replacements thereof, or any agreement otherwise extending or modifying the same, shall contain a provision whereby the mortgagee shall agree, acquiesce and consent that any insurance proceeds resulting from a loss on such property received by such mortgagee shall be held by it in trust for the purpose of paying for the cost of repairing, restoring or rebuilding the Jordan Marsh Facility (including Truck Ramp and Passageway) in accordance with the provisions of Section 5.1 hereof. Notwithstanding anything contained herein to the contrary, if any mortgagee holding a first mortgage covering the Jordan Tract shall require that insurance proceeds be applied in payment of indebtedness secured by such mortgage then such proceeds may be so applied but if and only if, before such application, the assent thereto of Lafayette shall have been obtained in writing. Such consent shall not be withheld if Jordan shall, simultaneously with the request for such consent, deliver to Lafayette substitute security reasonably acceptable to it such as cash or of a cash-equivalent nature (such as a letter of credit). Such substitute security shall be in an amount equal to the

lesser of the amount of insurance proceeds required to be applied to payment of indebtedness or the costs of repair, restoration or rebuilding.

5.3. Termination. The obligations of Jordan under this Article Five shall terminate on December 31, 2042.

#### Article Six:

##### Conveyance, Assignment or Other Transfer

6.1. Assignment. (a) Each of the Parties may convey, assign or otherwise transfer its rights hereunder at any time without the approval of the others, but only subject to the provisions of this Article. As used in this Article, the "Jordan Release Date" means 10 years from the date of this Agreement. As used in this Article, the "Lafayette Release Date" means the date that a Certificate of Completion shall have been issued by the Boston Redevelopment Authority with respect to the Lafayette Place Complex (both retail and hotel) pursuant to the Tripartite Agreement.

(b) If Jordan or any other owner from time to time of all or any part of the Jordan Tract or any interest therein having any liability or obligation arising hereunder shall transfer all its interest in the Jordan Tract, such transferor shall, from and after the Jordan Release Date or the date of such transfer, whichever is later, be relieved of all liability and obligations thereafter arising hereunder and incurred by it as the owner of such interest, and if Lafayette or any other owner from time to time of all or any part of the Lafayette Tract or any interest therein having any liability or obligation arising hereunder shall transfer all its interest in the Lafayette Tract, such transferor shall, from and after the Lafayette Release Date or the date of such transfer, whichever is later, be relieved of all liability and obligations thereafter arising hereunder and incurred by it as the owner of such interest; provided, however, any such relief shall be subject to the conditions

that no default shall have occurred and be continuing in the performance of any term, covenant, condition or agreement to be performed hereunder by the owners of the Tract which (or an interest in which) is the subject of such transfer and that the transferor shall execute and deliver to the non-transferring parties, or their successors in title, an instrument in recordable form by which such transferee assumes and agrees to perform and be bound by all the terms, covenants, conditions and agreements hereunder to be performed by the owners of such Tract.

(c) Nothing contained or implied in this Agreement shall prevent or limit the assignment by any Party of all or any part of its rights hereunder to any one or more lenders who shall be providing permanent or construction financing relative to either the Jordan Marsh Facility or Lafayette Place Complex, such assignment to be upon such terms and conditions as such lender may require (except that no such assignment shall limit or defeat the rights of the Parties hereunder). Jordan and Lafayette agree that the execution of any such assignment by either of them and the acceptance thereof by any lender, shall not constitute an assumption by the lender of any of the obligations of such assigning Party under this Agreement, unless and until such lender shall, by written notice sent to such non-assigning Party, specifically assume the obligations of the assigning Party under this Agreement or unless and until such lender succeeds, by foreclosure, or voluntary conveyance in lieu of foreclosure, to the interest of such assigning Party under this Agreement.

#### Article Seven:

##### Garage

7.1. Access to Garage. The City agrees that if requested by Jordan and consented to by Lafayette (but only

with such consent) the City will grant to Jordan an easement for direct access (as distinguished from the indirect access provided in Section 3.2) from the Jordan Marsh Facility to the Garage located on the Lafayette Tract. In the event of such request and consent, the City will execute and deliver to Jordan an appropriate instrument in recordable form providing for such easement. If a retail department store of not less than 100,000 square feet of selling area (which may include stock and fitting rooms) shall hereafter be constructed on the Lafayette Tract or immediately adjacent thereto and there shall be direct access between such store and the Garage, Lafayette will, if requested by Jordan, give its consent to such an easement on terms no more favorable than those available to such retail department store but shall not otherwise be required to give such consent.

Article Eight:

Miscellaneous

8.1. Certain agreements concerning rights granted under this Agreement. (a) As used in this Section 8.1:

(i) "Grantor" means a Party granting an easement, license or other right under this Agreement, and

(ii) "Grantee" means a Party and its permitted successors and assigns to which an easement, license or other right has been granted under this Agreement.

(b) None of the Parties makes any representations to any other hereunder relative to the quality of title to the areas to which easements and licenses granted hereby relate except that Jordan Marsh agrees that its leasehold estate in the Jordan Tract is subject and subordinate to this Agreement. Further, certain of the easements and licenses granted herein may relate to areas in which, as of the date of execution hereof, the Grantor has no legal interest. However, the Grantor of each easement and license hereunder intends and agrees that, to the extent that rights in such areas are hereafter acquired, the doctrine of title by estoppel shall apply to the end that acquisition by the Grantor subsequent to the execution hereof of any interest

in such areas shall automatically result in the transfer of such interests to the Grantee of such easement or license to the extent necessary to effect the purposes of this Agreement.

(c) Except as herein otherwise expressly provided, to the maximum extent permissible according to law, all covenants, conditions and agreements contained herein, affecting the use and maintenance of the Jordan Tract and Lafayette Tract, shall be deemed to be covenants running with the land and shall bind and inure to the benefit of the Parties and their respective successors and assigns and any Successor Facility.

(d) Except as otherwise herein expressly provided, this Agreement shall continue and the obligations hereunder shall remain binding from the date hereof.

To the extent, and only to the extent, that rights and restrictions contained in this Agreement are determined to be subject to the Rule against Perpetuities, or to the operation of any rule relative to restraints on alienation and the limitation thereof, such rights and restrictions shall be of force and effect only during the maximum period during which any such rules would not render the same unenforceable. Where the lives of persons are the measuring standards for the application of such rules, such lives shall be of the individuals signing this Agreement and their spouses, and the issue of such persons living at the date of this Agreement. Consistent therewith, as of the date of this Agreement, to the extent that rights and restrictions in this Agreement should be determined to be subject to any such rules, the same shall be of force and effect only during the period which ends 21 years (or such longer period as may hereafter be allowed by law) following the last to die of those persons referred to above and the issue now living of such persons, and, thereafter, shall be of no further force and effect.

8.2. Indemnification. Jordan will indemnify and save Lafayette harmless from and against any and all claims, actions, damages, liability and expense, including reasonable attorneys' fees, in connection with the loss of life, personal injury, damage to property, injury to reputation and right of privacy, and claims of false arrest, or any of them, in, on or about the Combined Site (except inside the buildings on the Lafayette Tract, provided that this exception shall not encompass those areas subject to the Emergency Egress Easements referred to in Section 3.3 hereof unless Lafayette shall use the same) including the Truck Ramp and Passageway occasioned wholly or in part by any act or omission of Jordan or its tenants, agents, contractors or employees, and Lafayette will indemnify and save Jordan harmless from and against any and all of the above set forth claims, actions, damages, liability and expense including reasonable attorneys' fees in, on or about the Combined Site (except inside the buildings on the Jordan Tract) including the Truck Ramp and Passageway occasioned wholly or in part by any act or omission of Lafayette, or their tenants, agents, contractors or employees. If and to the extent that the following provision may be effective without invalidating or making it impossible to secure insurance coverage from responsible insurance companies (even though extra premium may result therefrom): Jordan and Lafayette agree that, with respect to any hazard which is covered by insurance then being carried by them, the one carrying such insurance and suffering such loss releases the other of and from any and all claims with respect to such loss to the extent so covered; and they further mutually agree that their respective insurance companies shall have no right of subrogation against the other on account thereof.

8.3. Recordation. This Agreement shall be recorded against the Jordan Tract and the Lafayette Tract and

the fees for such recording shall be shared equally by such Parties.

8.4. Remedies for Breaches. In the event that any party shall fail to comply with or violate any of the provisions of this Agreement, then the other Party hereto entitled to the benefit of such provision may, without limiting any rights specifically set forth in this Agreement on account of such failure or violation, institute such actions and proceedings as may be appropriate and permissible under this Agreement, including actions and proceedings to compel specific performance and payment of all damages, expenses, and costs.

8.5. No Waiver. No waiver of any default by any Party hereto shall be implied from any omission by any other Party hereto to take any action in respect of such default, whether or not such default continues or is repeated. No express waiver of any default shall affect any default or cover any period of time other than the default and period of time specified in such express waiver. One or more waivers of any default in the performance of any term, provision or covenant contained in this Agreement shall not be deemed to be a waiver of any subsequent default in the performance of the same term, provision or covenant or any other term, provision or covenant contained in this Agreement. The consent or approval by any Party hereto to or of any act or request by any other Party hereto requiring consent or approval shall not be deemed to waive or render unnecessary the consent or approval to or of any subsequent similar acts or requests. Except as otherwise herein specifically provided, the rights and remedies of each Party hereto under the terms of this Agreement shall be deemed to

be cumulative and none of such rights and remedies shall be exclusive of any others, or of any right or remedy at law or in equity which any Party hereto might otherwise have from a default under this Agreement and the exercise of any right or remedy by a Party hereto shall not impair any such Party's standing to exercise any other right or remedy.

8.6. No Personal Liability. No officer, director or stockholder, as such, of Jordan or Lafayette has any personal liability to the other or to anyone claiming through or under the other. No tenant of any store or licensee or concessionaire with respect to any space within the Lafayette Tract and no owner of the fee or leasehold estate in the portion of the Lafayette Tract devoted to hotel use shall have any personal liability for the payments or any other obligations hereunder except for such obligations as such tenant, licensee, concessionaire or owner shall willfully breach.

8.7. No Relationship of Principal and Agent. Neither anything contained in this Agreement nor any acts of the Parties hereto shall be deemed or construed by any Party hereto or by any third person to create the relationship of principal and agent, or of limited or general partnership, or of joint venture, or of any association between the Parties hereto.

8.8. Severability; Governing Law. If any part of this Agreement, or the application thereof to any person or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this Agreement, or the application of such part to any other persons or circumstances, shall not be affected thereby, and each part of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

This Agreement may be cancelled, modified or amended only pursuant to a written agreement and shall be construed, interpreted and applied in accordance with the laws of the Commonwealth of Massachusetts and shall be

binding upon the Parties, their respective successors and assigns (but this shall not be interpreted as permitting a conveyance, assignment, or other transfer prohibited hereby).

8.9. Matters to be Disregarded. The titles to the several Articles and Sections of this Agreement are inserted for convenience of reference only and shall be disregarded in construing or interpreting any of the provisions of this Agreement.

8.10. Status Report. The Parties may find it necessary to establish to third parties, such as accountants, banks, mortgagees, or the like, the then current status of performance hereunder. Accordingly, any party, on the written request of another Party made from time to time, will promptly furnish a written statement on the status of any matter pertaining to this Agreement, provided that nothing herein shall require any Party to provide information unknown to it or which, in its reasonable opinion, is of such a confidential nature that its disclosure to third parties is unwarranted. Consistent therewith, the Parties specifically agree to execute such documents as may be appropriate permanently to memorialize dates which are, at present, uncertain and the establishment of which is necessary to determine periods of time for which obligations run.

8.11. Supplemental Documents. Recognizing that problems and requirements may arise in connection with the joint and separate action to be taken by the Parties pursuant to the terms of this Agreement (including requirements relative to financing) all of which cannot now be anticipated in full, each of the Parties agrees to execute and deliver such other and further instruments (including, when as a result of design or construction the easement referred to in Sections 2.4(b), 3.3 and 3.4 shall have been determined specifically, instruments defining such easements specifically) as may be reasonably requested by another Party or any lender providing financing to such

other Party, so long as such other and additional agreements are consistent with the terms and provisions hereof, shall not impose additional obligations on any Party, shall not deprive any Party of any privileges herein granted to it, and shall be in furtherance of carrying out the intent and purpose of the agreements herein expressed.

8.12. Arbitration. Disputes relating to items and amounts for which Lafayette shall be obligated to Jordan as provided in Sections 2.2 and 2.3 hereof shall be decided by arbitration. Such arbitration shall be in Boston, Massachusetts, and shall be undertaken in accordance with the Rules of the American Arbitration Association then obtaining. The arbitrator shall, if at all possible, be versed in large-scale commercial real estate development and shall render an award which shall explicitly set forth, in detail, the reasons therefor. This agreement to arbitrate shall be specifically enforceable under the prevailing arbitration law. The award rendered by the arbitrators shall be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof. Notice of the demand for arbitration shall be filed in writing with the other Party and with the American Arbitration Association. The demand for arbitration shall be made within a reasonable time after the claim, dispute or other matter in question has arisen, and in no event shall it be made after the date when institution of legal or equitable proceedings based on such claim, dispute or other matter in question would be barred by the applicable statute of limitations.

#### Article Nine:

##### Extent of City as a Party

9.1. Extent of City as a Party. The City joins in this Agreement as a Party only to the following extent:

The City hereby agrees that the grants, terms, conditions and provisions of this Agreement may be modified or amended, without the prior consent of the City except where such modification or amendment would substantially reduce or impair public rights of passage in and to the Truck Ramp, the Passageway and other portions of either Tract to which rights have previously been granted to the City. The City shall be given prior notice of any proposed modification or amendment to this Agreement and the same shall be considered as not substantially reducing or impairing such public rights of passage if the City shall assent thereto or shall fail, within fifteen days after such notice shall have been given to object thereto.

Article Ten:

Notices

10.1. Notices. Every notice, demand, request, consent, approval or other communication which any Party is required or desires to give or make or communicate upon or to any other Party shall be effective and valid only when in writing and shall be given or made or communicated by mailing the same by registered or certified mail, postage prepaid, return receipt requested, as follows:

(a) If to Jordan:

c/o Jordan Marsh Company  
Boston, Massachusetts  
Attention:

and

c/o Alstores Realty Corporation  
1114 Avenue of the Americas  
New York City, New York 10036

Attention:

or at such other address or addresses as such Party shall from time to time and at any time designate by notice to the others.

(b) If to the City:

or at such other address or addresses as such Party shall from time to time and at any time designate by notice to the others.

(c) If to Lafayette:

or to such other address or addresses as such Party shall from time to time and at any time designate by notice to the others.

Every notice, demand, request or other communication sent shall be deemed to have been given, made or communicated, as the case may be, if mailed, two days after the time that the same shall have been deposited, properly addressed with postage prepaid, in the United States mails.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed, and their respective seals to be hereunto affixed and attested, as of the day and year first above written.

AL-JORDAN REALTY CORP.

ATTEST:

\_\_\_\_\_

By \_\_\_\_\_  
[Title]

JORDAN MARSH COMPANY

ATTEST:

\_\_\_\_\_

By \_\_\_\_\_  
[Title]

LAFAYETTE PLACE ASSOCIATES

By: [ \_\_\_\_\_ ]  
General Partner

ATTEST:

By: MONDEV U.S.A., INC.

\_\_\_\_\_

By \_\_\_\_\_  
[Title]

By: [ \_\_\_\_\_ ]  
General Partner

ATTEST:

By: SEFRIUS CORP.  
General Partner

\_\_\_\_\_

By \_\_\_\_\_  
[Title]

ATTEST:

CITY OF BOSTON

\_\_\_\_\_

By \_\_\_\_\_  
Mayor

By \_\_\_\_\_  
Commissioner of Real Property

[Appropriate notarial acknowledgments to be  
added]

STATE OF NEW YORK

COUNTY OF

The personally appeared the above-named  
, of Al-Jordan Realty Corp., and acknow-  
ledged the foregoing instrument to be his free act and deed  
and the free act and deed of Al-Jordan Realty Corp.

Before me,

\_\_\_\_\_  
Notary Public  
My commission expires:

COMMONWEALTH OF MASSACHUSETTS

, SS , 1978

The personally appeared the above-named  
, of Jordan Marsh Company, and acknow-  
ledged the foregoing instrument to be his free act and deed  
and the free act and deed of Jordan Marsh Company.

Before me,

\_\_\_\_\_  
Notary Public  
My commission expires:

COMMONWEALTH OF MASSACHUSETTS

, SS , 1978

The personally appeared the above-named  
, a partner in Lafayette Place Associates,  
and acknowledged the foregoing instrument to be his free  
act and deed and the free act and deed of Lafayette Place  
Associates.

Before me,

\_\_\_\_\_  
Notary Public  
My commission expires:

COMMONWEALTH OF MASSACHUSETTS

, SS , 1978

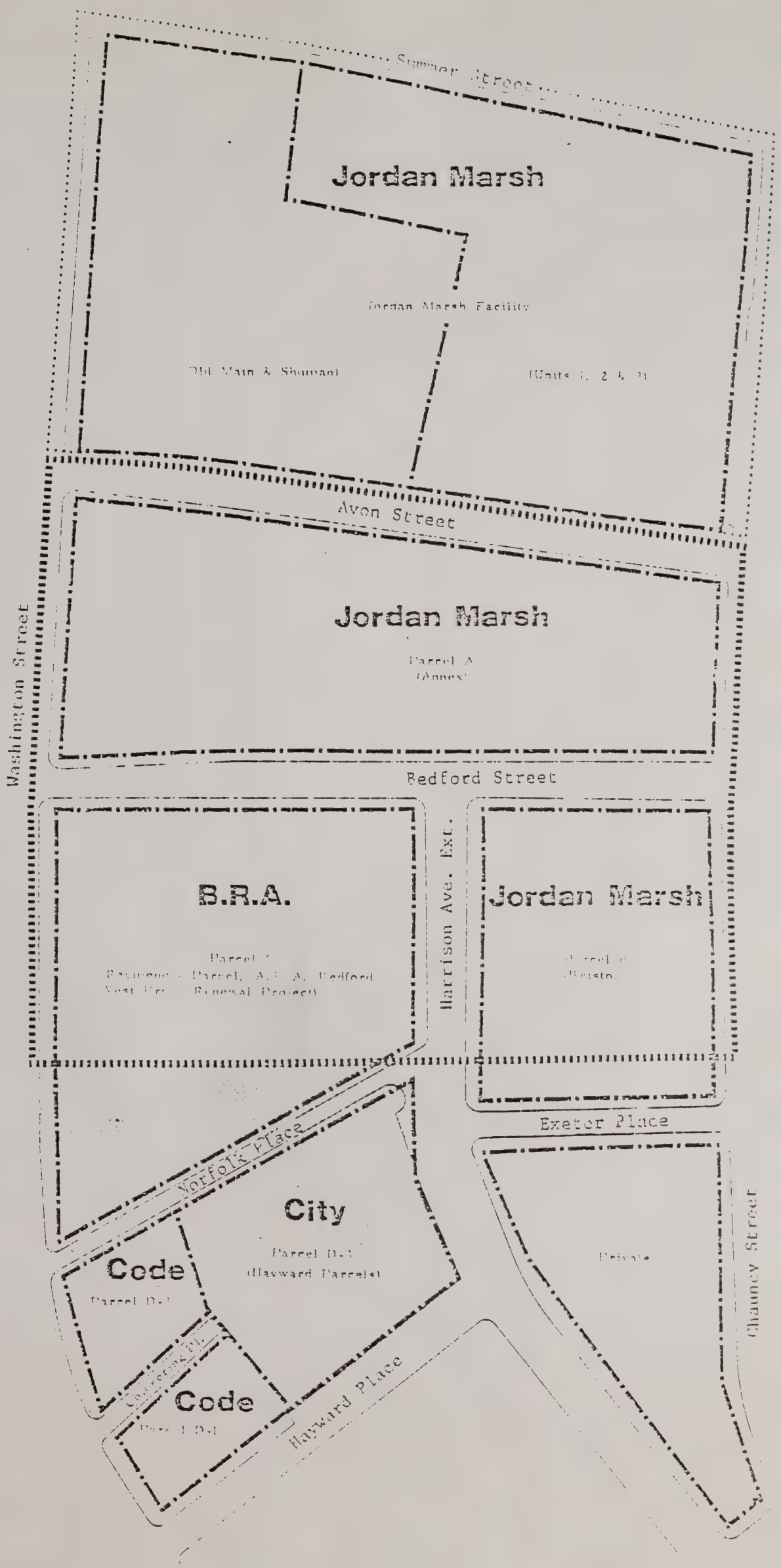
The personally appeared the above-named Kevin H.  
White, Mayor of the City of Boston, and acknowledged the  
foregoing instrument to be his free act and deed and the  
free act and deed of the City of Boston.

Before me,

\_\_\_\_\_  
Notary Public  
My commission expires:

Project Title  
Jordan Marsh a.k.a. Al-Jordan Tract  
Lafayette Place a.k.a. Lafayette Tract  
New Norfolk R.O.W.

0 50 100 200 300



Washington Street

Summer Street

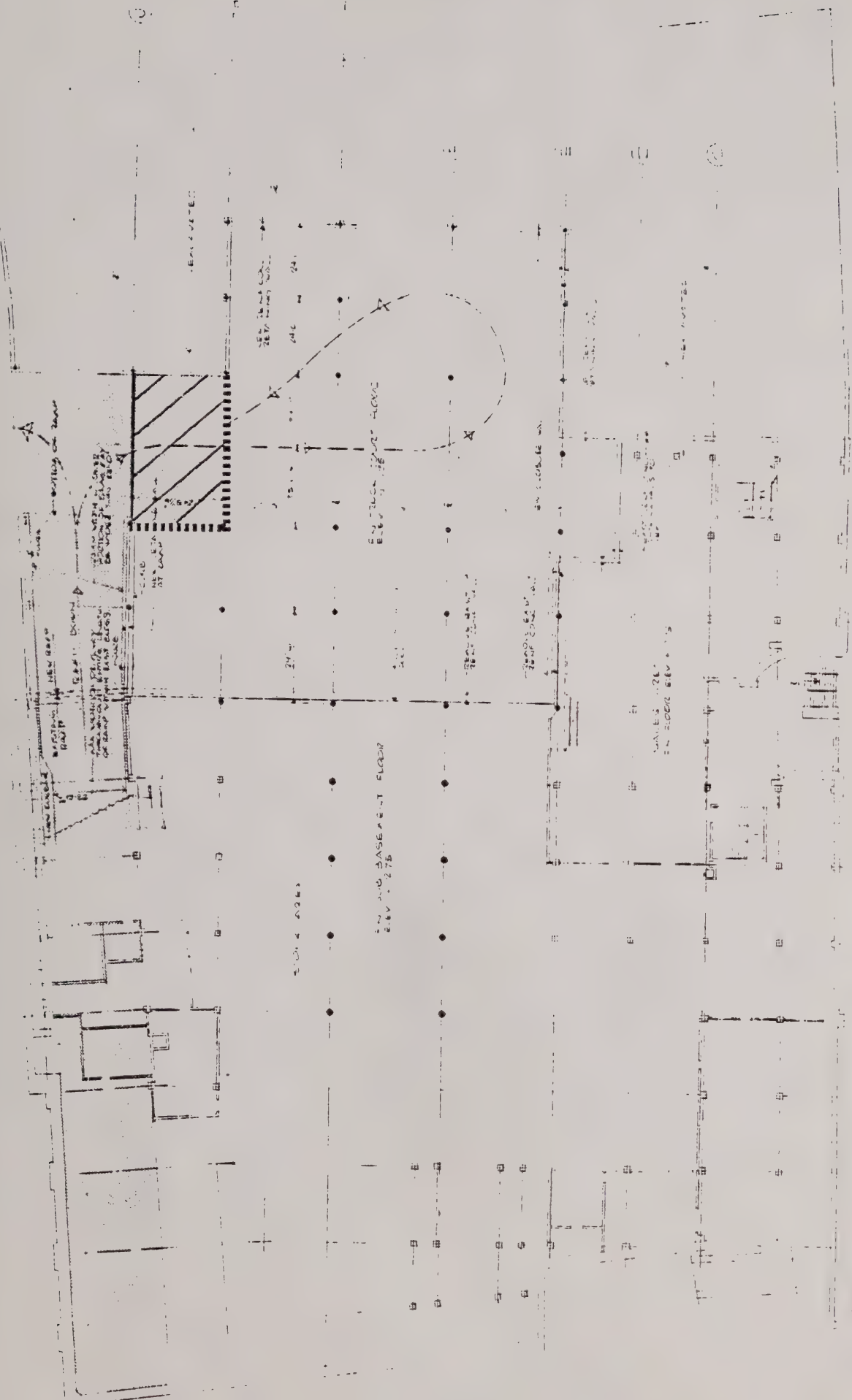
Chambers Street

Proposed New Security Closure

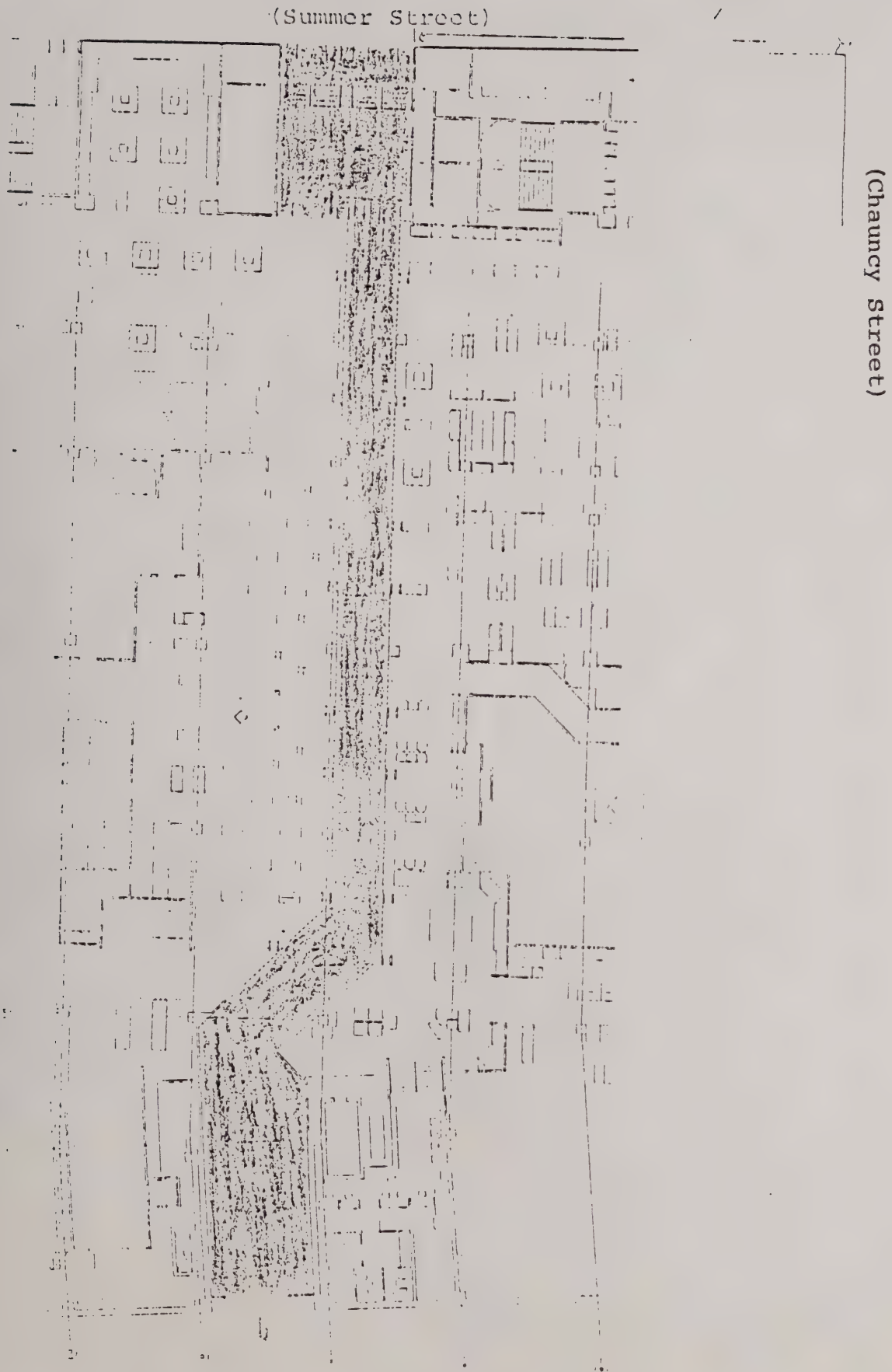
Existing Security Closure

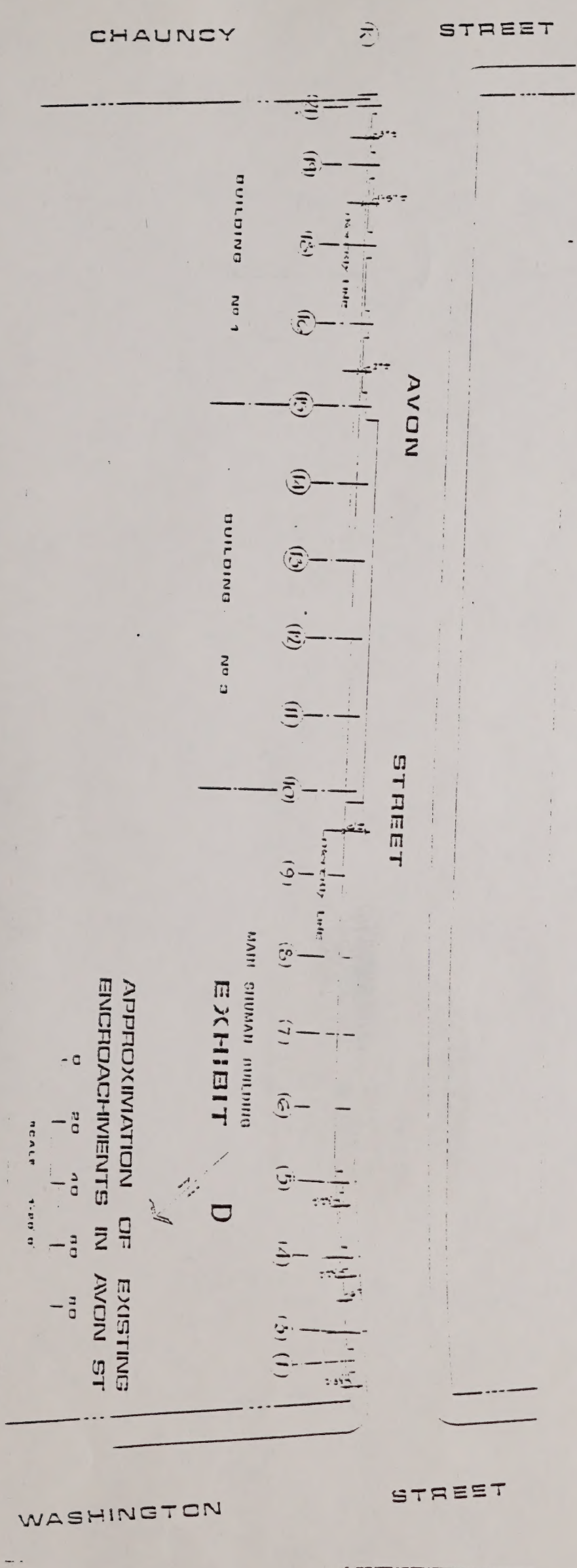
EXHIBIT B

PLAN OF TRUCK RAMP



Plan of Passageway





CHAUNCY

STREET

AVON

STREET

STREET

WASHINGTON

BUILDING No 1

BUILDING No 2

MAIN SHUMAN BUILDING

EXHIBIT D

APPROXIMATION OF EXISTING  
ENCROACHMENTS IN AVON ST

0 20 40 60 80 100  
feet

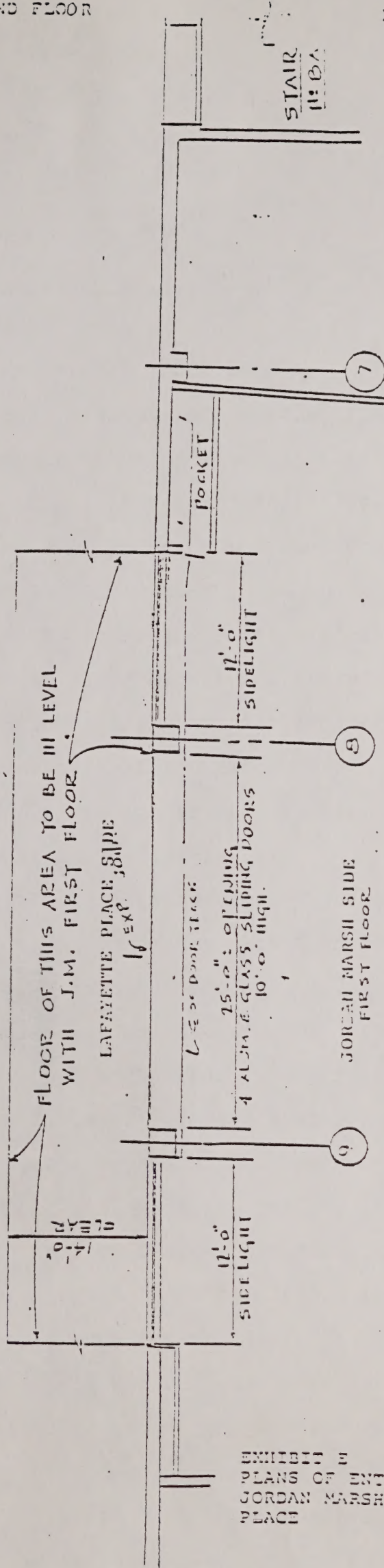
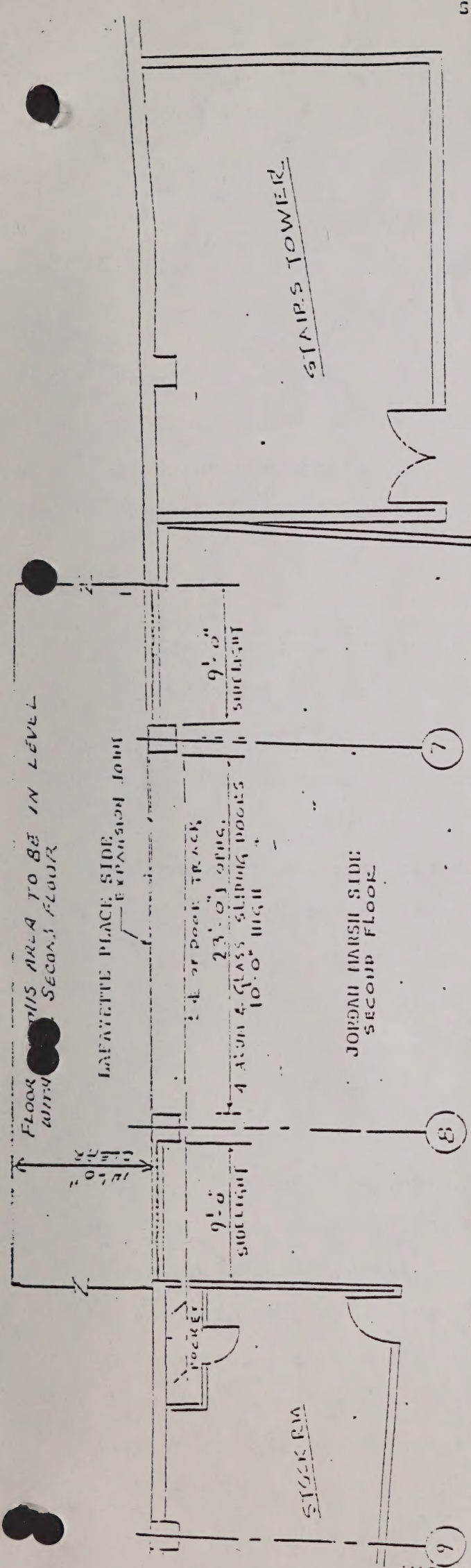


EXHIBIT E  
PLANS OF ENTRANCES BETWEEN  
JORDAN MARSH AND LAFAYETTE  
PLACE

Form of Operating Covenant

AGREEMENT, dated [insert Closing Date] by AL-JORDAN REALTY CORP., ("Al-Jordan") and JORDAN MARSH COMPANY (BOSTON) ("Jordan Marsh") both Massachusetts corporations having their principal place of business at 450 Washington Street, Boston, Massachusetts.

IN CONSIDERATION OF Ten Dollars and other valuable consideration the receipt of which is hereby acknowledged, Al-Jordan and Jordan Marsh hereby enter into the following covenants with The City of Boston, a municipal corporation of the Commonwealth of Massachusetts; as the owner of the parcels of land described in Annex I hereto:

1. Al-Jordan and Jordan Marsh covenant that until the tenth anniversary of the date hereof, there will be operated by Jordan Marsh on the parcels of land described in Annex II hereto a department store under the name of Jordan Marsh having a selling area (as hereinafter defined) of not less than 400,000 square feet, and until the 25th anniversary of the date hereof, there will be operated on the parcel of land described in Annex II hereto a department store of the same quality and standards as the store presently operated thereon having a selling area of not less than 400,000 square feet. "Selling area" as used herein means "selling area" as used generally on the date hereof by Allied Stores Corporation, a Delaware corporation, with respect to stores owned directly or indirectly by it and shall include stock and fitting rooms. The requirement for operation by Jordan Marsh shall not be deemed to exclude the operation of some (but not all) departments by tenants, licensees or concessionaires of Jordan Marsh.

2. The covenant of Al-Jordan and Jordan Marsh herein is subordinate to the lien of any mortgage or deed of trust now or hereafter held by any institutional lender affecting the parcels of land described in Annex II hereto and the improvements thereon. Any purchaser in any foreclosure proceeding or pursuant to any exercise of a power of sale or any grantee under a deed in lien of foreclosure and all successors to any such purchaser or grantee shall take said real property free and clear of the covenant herein and any default thereunder.

3. If the performance of the covenant herein is prevented by act of God, war, labor dispute or other cause beyond the reasonable control of Al-Jordan or Jordan Marsh, such covenant shall be suspended for such time as such performance is so prevented.

4. The covenant herein shall run with the land and shall bind Al-Jordan, Jordan Marsh and their successors in interest to the parcels described in Annex II hereto and enure to the benefit of the City of Boston and its successors in interest to the parcels described in Annex I hereto.

IN WITNESS WHEREOF, Al-Jordan and Jordan Marsh have caused this agreement to be executed, and their respective seals to be hereunto affixed and attested, as of the day and year first written.

AL-JORDAN REALTY CORP.

Attest:

By \_\_\_\_\_

\_\_\_\_\_

JORDAN MARSH COMPANY (BOSTON)

Attest:

By \_\_\_\_\_

\_\_\_\_\_

[add (1) appropriate notarial acknowledgements, (2) as Annex I a description of the parcels comprising the Lafayette Place Complex and (3) as Annex II a description of the parcels comprising the Jordan Marsh Facility]